रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-सा.-13122024-259384
CG-DL-W-13122024-259384

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 48] नई दिल्ली, दिसम्बर 1—दिसम्बर 7, 2024, शनिवार/ अग्रहायण 10—अग्रहायण 16, 1946
No. 48] NEW DELHI, DECEMBER 1—DECEMBER 7, 2024, SATURDAY/ AGRAHAYANA 10–AGRAHAYANA 16, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 12 सितम्बर, 2024

का.आ. 2174.—केन्द्र सरकार, एतद्द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (वर्ष 1946 की अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार की अधिसूचना सं. एच-1701/135/2024-एचडी-एचडी इम्फाल, दिनांक 09 अगस्त, 2024, सचिवालय : गृह विभाग, के माध्यम से प्रदान की गई सम्मति से, इस अधिनियम की धारा 3, समय-समय पर यथासंशोधित, के अंतर्गत केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों के कार्मिकों और गैर-सरकारी व्यक्तियों (पृथक रूप से या केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों के कार्मिकों के साथ मिल कर) द्वारा किए गए अभिकथित अपराधों और अपराधों की श्रेणियों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य

में, इस शर्त के अधीन करती है कि मणिपुर की राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में, केवल उन मामलों को छोड़ कर, जिनमें राज्य सरकार से पूर्व लिखित अनुमति ले ली गई हो, इस प्रकार का कोई अन्वेषण नहीं किया जाएगा। अन्य किन्हीं अपराधों के लिए राज्य सरकार द्वारा पूर्व में प्रदान की गई आम सम्मति तथा किसी भी अपराध के लिए मामला दर मामला आधार पर प्रदान की गई सम्मति भी पूर्ववत लागू रहेंगी।

[फा. सं. 228/73/2024-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel And Training)

New Delhi, the 12th September, 2024

S.O. 2174.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946, the Central Government with the consent of the State Government of Manipur, issued vide Notification No. H-1701/135/2024-HD-HD, Imphal the 9th August, 2024 Secretariat : Home Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Manipur for investigation of the offences or classes of offences notified under section 3 of the Act, as amended from time to time, alleged to have been committed by employees of the Central Government, Central Public Sector Undertakings and Private persons (whether acting separately or in conjunction with the employees of the Central Government/Central Government Undertakings) subject, however, to the condition that no such investigation shall be taken up in cases relating to the public servants controlled by the State Government of Manipur except with the prior written permission of the State Government. All previous general consent for any other offences and consent accorded on case to case basis for any other offence by the State Government shall also remain in force.

[F. No. 228/73/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 12 सितम्बर, 2024

का.आ. 2175.—केन्द्र सरकार, एतद्द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (वर्ष 1946 की अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार की अधिसूचना सं.एच-3605/1/2024-एचडी-एचडी, इम्फाल, दिनांक 26 अगस्त, 2024, सचिवालय : गृह विभाग, के माध्यम से जारी की गई सम्मति से, राज्य में हालिया हिंसा के संबंध में दर्ज निम्नलिखित प्राथमिकी मामलाः-

1. भारतीय दंड संहिता की धाराएँ 307/365/379ए/427/506/34 और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम की धारा 16/20 तथा आयुध अधिनियम की धारा 25(1-बी)/25(1-एबी) के तहत दर्ज प्राथमिकी सं. 165(02)2024 पीआरटी-पीएस

और ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य में करती है।

[फा. सं. 228/77/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 12th September, 2024

S.O. 2175.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), the Central Government with the consent of the State Government of Manipur, issued vide Notification No. H-3605/1/2024-HD-HD, Imphal, the 26th August, 2024, Secretariat : Home Department, hereby extends the powers and jurisdiction of the members of the Delhi Special

Police Establishment in the whole State of Manipur for carrying out investigation of the following FIR case registered in connection with recent violence in the State.

I. FIR No. 165(02)2024 PRT-PS U/S 307/365/379A/427/506/34 IPC, 16/20 UA(P) Act & 25(1-B)/25(1AB) A. Act

and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/77/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2024

का.आ. 2176.—केन्द्र सरकार, एतद्द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (वर्ष 1946 की अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार द्वारा अधिसूचना सं. 20/03/2024-3एचजी1, दिनांक 08 अगस्त, 2024, गृह विभाग के माध्यम से प्रदान की गई सम्मति से, इस अधिनियम की धारा 3 के अंतर्गत केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों के कार्मिकों और गैर-सरकारी व्यक्तियों (पृथक रूप से या केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों के कार्मिकों के साथ मिल कर) द्वारा किए गए अभिकथित अपराधों और अपराधों की श्रेणियों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त हरियाणा राज्य में, इस शर्त के अधीन करती है कि हरियाणा की राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में, केवल उन मामलों को छोड़ कर, जिनमें राज्य सरकार से पूर्व लिखित अनुमति ले ली गई हो, इस प्रकार का कोई अन्वेषण नहीं किया जाएगा। अन्य किन्हीं अपराधों के लिए राज्य सरकार द्वारा पूर्व में प्रदान की गई आम सम्मति तथा किसी भी अपराध के लिए मामला दर मामला आधार पर प्रदान की गई सम्मति भी पूर्ववत लागू रहेंगी।

[फा. सं. 228/74/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 18th September, 2024

S.O. 2176.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Central Government with the consent of the State Government of Haryana, issued vide Notification No. 20/03/2024-3HG1 dated 08th August, 2024, Home Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the State of Haryana for investigation of the offences or classes of offences notified under section 3 of the Act, alleged to have been committed by employees of the Central Government, Central Public Sector Undertakings and private persons (whether acting separately or in conjunction with the employees of Central Government/Central Government Undertakings). However, no such investigation shall be taken up in cases relating to the public servants of State Government except with the prior written permission of the State Government. All previous general consent for any other offences and consent accorded on case to case basis for any other offence by the State Government shall remain in force.

[F. No. 228/74/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 2177.—केन्द्र सरकार, एतद्द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (वर्ष 1946 की अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मिज़ोरम राज्य सरकार की अधिसूचना सं. सी.31016/1/2020-विज., दिनांक 27.06.2024, सतर्कता विभाग, मिज़ोरम सचिवालय भवन, मिज़ोरम नवीन राजधानी परिसर (माइनको): आइज़ॉल के माध्यम से प्रदान की गई सम्मति से, अधिनियम की

धारा 3, समय-समय पर यथासंशोधित, के अंतर्गत अधिसूचित केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों और गैर-सरकारी व्यक्तियों (पृथक रूप से या केंद्र सरकार, केंद्रीय सार्वजनिक उपक्रमों के कार्मिकोंकेसाथ मिल कर साजीश कर के) द्वारा किए गए अभिकथित अपराधों और अपराधों की श्रेणियों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मिज़ोरम राज्य में करती है। तथापि, इस शर्त के अधीन कि मिज़ोरम की राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में, केवल उन मामलों को छोड़ कर जिनमें राज्य सरकार से पूर्व लिखित अनुमति ले ली गई हो, इस प्रकार का कोई अन्वेषण नहीं किया जाएगा। अन्य किसी अपराध के लिए राज्य सरकार द्वारा पूर्व में प्रदान की गई सभी आम सम्मति भी पूर्ववत लागू रहेंगी।

[फा. सं. 228/03/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 26th September, 2024

S.O. 2177.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the State Government of Mizoram, issued vide Notification No.-C.31016/1/2020-VIG, dated 27.06.2024, Vigilance Department, Mizoram Secretariat Building, Mineco:Aizawl, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Mizoram for investigation of the offences or classes of offences notified under section 3 of the Act, as amended from time to time, alleged to have been committed by employees of the Central Government, Central Public Undertakings, and Private persons (whether acting separately or in conjunction with the employees of Central Government/Central Government Undertakings). Subject, however, to the condition that no such investigation shall be taken up in cases relating to the public servants controlled by the State Government of Mizoram except with the prior written permission of the State Government. All previous general consent for any other offence by the State Government shall also remain in force.

[F. No. 228/03/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 4 अक्तूबर, 2024

का.आ. 2178.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना सं.-जी.ओ. (2डी). सं. 190 दिनांक 19.06.2024, गृह (नागरिकता) विभाग एवं शुद्धिपत्र अधिसूचना सं.-जी.ओ. (2डी). सं. 284 दिनांक 11.09.2024 के माध्यम से जारी तमिलनाडु राज्य सरकार की सम्मति से, डॉक्स इंटेलिजेंस यूनिट (डीआईयू) को सूचनाएँ भेजने के लिए 2,000/- (दो हजार रुपये) का रिश्वत/अनुचित लाभ की मांग करने के संबंध में श्री मनीष मित्तल, निवारक अधिकारी, वर्ग-3, द्वितीय तल, कस्टम्स हाउस, राजाजी सलाई, चेन्नई-1 के विरुद्ध दिनांक 04.06.2024 को श्री टी सुरेश, मालिक, मिर्थिकश्री एंटरप्राइजेज द्वारा दर्ज कराई गई शिकायत के संबंध में भ्रष्टाचार निवारण अधिनियम, 1988 (वर्ष 2018 में यथा संशोधित) की धारा 7 के तहत दिनांक 20.6.2024 को पंजीकृत सीबीआई मामला आरसी0322024ए00009 से उत्पन्न मामलों तथा उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का पंजीकरण और अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 20.06.2024 से) समस्त तमिलनाडु राज्य में करती है।

[फा. सं. 228/82/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 4th October, 2024

S.O. 2178.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Central Government with the consent of

the State Government of Tamil Nadu, issued vide Notification No. G.O. (2D) No.190 dated 19.06.2024, Home (Citizenship) Department and Corrigendum Notification No. G.O. (2D).No .284 dated 11.09.2024, Home (Citizenship) Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f 20.06.2024) in the whole State of Tamil Nadu for registration and investigation in CBI case RC0322024A00009 registered on 20.06.2024 under Section 7 of Prevention of Corruption Act, 1988 (amended in 2018) against Shri. Manish Mittal, Preventive Officer, Group-3, Second Floor, Customs House, Rajaji Salai, Chennai-1 arising out of the complaint dated 04.06.2024 lodged by Shri T. Suresh, Proprietor of Mirthikkashree Enterprises for the demand of bribe/undue advantage of Rs. 2,000/- (Rupees two thousand) to send the details to Docks Intelligence Unit (DIU) and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/82/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 8 अक्तूबर, 2024

का.आ. 2179.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार की अधिसूचना सं. ईसीएफ-511184/19, दिनांक 13.09.2024, राजनीतिक(ए) विभाग:: दिसपुर के माध्यम से जारी सम्मति से केन्द्र सरकार, केन्द्रीय सार्वजनिक क्षेत्र उपक्रमों के कर्मचारियों एवं गैर-सरकारी व्यक्तियों (पृथक रूप से अथवा केन्द्र सरकार/केन्द्र सरकार उपक्रमों के कर्मचारियों के साथ मिलकर) द्वारा अभिकथित तौर पर किए गए अपराधों अथवा समय-समय पर यथा संशोधित उक्त अधिनियम की धारा 3 के तहत अधिसूचित अपराधों या अपराधों की श्रेणियों का अन्वेषण करने के लिए, यद्यपि इस शर्त के अधीन कि राज्य सरकार की पूर्व लिखित अनुमति के बिना राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में ऐसा कोई अन्वेषण नहीं किया जाएगा, दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त असम राज्य में करती है। किसी अन्य अपराध के लिए पूर्व की सभी सामान्य सम्मति तथा राज्य सरकार द्वारा अन्य किसी अपराध के लिए मामला-दर-मामला आधार पर दी गई सम्मति भी लागू रहेगी।

[फा. सं. 228/85/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 8th October, 2024

S.O. 2179.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (No. 25 of 1946), the Central Government with the consent of the Government of Assam, issued vide Notification No. ECF-511184/19, dated 13.09.2024, Political(A) Department :: Dispur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the State of Assam for investigation of the offences or classes of offences notified under section 3 of said the Act, as amended from time to time, alleged to have been committed by employees of the Central Government, Central Public Sector Undertakings and Private persons (whether acting separately or in conjunction with the employees of Central Government/Central Government Undertakings) subject however to the condition that no such investigation shall be taken up in cases relating to the public servants of State Government except with the prior written permission of the State Government. All previous general consent for any other offences and consent accorded on case-to-case basis for any other offence by the State Government shall also remain in force.

[F. No. 228/85/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 9 अक्तूबर, 2024

का.आ. 2180.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का केंद्रीय अधिनियम 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तेलंगाना राज्य सरकार की अधिसूचना सं. जी.ओ.एमएस.सं.51, गृह (विशेष) विभाग, दिनांक 30.08.2022 में जारी किए गए आदेशों में छूट देते हुए अधिसूचना सं. जी.ओ.एमएस.सं.62, दिनांक 18.09.2024, गृह (विशेष) विभाग के माध्यम से जारी

सम्मति से दक्षिण मध्य रेलवे, सिकंदराबाद के अज्ञात लोक सेवकों तथा मेसर्स बुनकर जातीय हाथकघा सहकारी समिति लिमिटेड, कानपुर के विरुद्ध चादरों की खरीद में अनियमितताएं बरतने और इस प्रकार राजकोष को 78,27,946/- रु. की हानि कारित करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त तेलंगाना राज्य में करती है।

[फा. सं. 228/83/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 9th October, 2024

S.O. 2180.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Central Government with the consent of the State Government of Telangana, issued vide Notification No. G.O.Ms.No.62 dated 18.09.2024, Home (Special) Department, hereby extends the powers and jurisdiction of all the members of the Delhi Special Police Establishment in the whole of the State of Telangana regarding the case against unknown public servants of the South Central Railways, Secunderabad and M/s. Bunkar Jatiy Hathkagha Sahkari Samiti Limited, Kanpur, for investigation regarding irregularities in the procurement of bedsheets and thus causing a loss of Rs.78,27,946/- to the exchequer in relaxation of the orders issued in G.O.Ms.No.51, Home (Special) Department, dated 30.08.2022 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/83/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 9 अक्तूबर, 2024

का.आ. 2181.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए आंध्र प्रदेश राज्य सरकार की अधिसूचना सं. जी.ओ.एमएस.सं.102, दिनांक 20-08-2024, गृह (एससी.ए) विभाग के माध्यम से जारी सम्मति से केन्द्र सरकार, केन्द्रीय सार्वजनिक क्षेत्र उपक्रमों के कर्मचारियों एवं गैर-सरकारी व्यक्तियों (पृथक रूप से कार्य कर रहे हों अथवा केन्द्र सरकार/केन्द्र सरकार उपक्रमों के कर्मचारियों के साथ मिलकर) द्वारा कथित तौर पर किए गए अपराधों अथवा समय-समय पर यथा संशोधित उक्त अधिनियम की धारा 3 के तहत अधिसूचित अपराधों या अपराधों की श्रेणियों का अन्वेषण करने के लिए, यद्यपि इस शर्त के अधीन कि राज्य सरकार की पूर्व लिखित अनुमति के बिना आंध्र प्रदेश राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में ऐसा कोई अन्वेषण नहीं किया जाएगा, दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार दिनांक 01.07.2024 से समस्त आंध्र प्रदेश राज्य में करती है। राज्य सरकार द्वारा किन्हीं अन्य अपराधों के संबंध में पूर्व में जारी समस्त सामान्य सम्मति तथा किसी अन्य अपराध हेतु मामला दर मामला आधार पर प्रदान की गई सम्मति भी लागू रहेंगी।

[फा. सं. 228/86/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 9th October, 2024

S.O. 2181.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Andhra Pradesh, issued vide Notification No. G.O.Ms.No.102, dated 20-08-2024, Home (SC.A) Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Andhra Pradesh w.e.f 01.07.2024, for investigation of the offences or classes of offences notified

under section 3 of the Act, as amended from time to time, alleged to have been committed by employees of the Central Government, Central Public Sector Undertakings and Private Persons (whether acting separately or in conjunction with the employees of Central Government /Central Government Undertakings) subject, however, to the condition that no such investigation shall be taken up in cases relating to the public servants controlled by the State Government of Andhra Pradesh except with the prior written permission of the State Government. All previous general consent for any other offences and consent accorded on case to case basis for any other offence by the State Government shall also remain in force.

[F. No. 228/86/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 9 अक्तूबर, 2024

का.आ. 2182.—केंद्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम,1946 (1946 का केंद्रीय अधिनियम, 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तेलंगाना राज्य सरकार की सं. जी.ओ. एमएस. सं. 51, गृह (विशेष) विभाग, दिनांक 30.08.2022 द्वारा जारी आदेशों में छूट देते हुए अधिसूचना सं. जी.ओ. एमएस. सं. 63, दिनांक 18.09.2024, गृह (विशेष) विभाग के माध्यम से जारी सम्मति से सीक्यूएएस इम्प्लाईज क्रेडिट कोऑपरेटिव सोसायटी (सीईसीसीएस), सिकंदराबाद के संचालन/प्रबंधन में अनियमितता बरतने और डिफेंस इंस्पेक्शन इम्प्लाईज कोऑपरेटिव सोसायटी (डीआईईसीएचएस), हैदराबाद के गठन, संचालन एवं प्रबंधन में सरकारी कोष के दुर्विनियोजन करने के लिए ब्रिगेडियर विक्रम आहूजा (वर्तमान में सेवानिवृत्त), मेजर जनरल (तत्कालीन ब्रिगेडियर) गौरब रॉय (वर्तमान में सेवानिवृत्त) & ब्रिगेडियर एन. रंगराजन (वर्तमान में सेवानिवृत्त) एवं अज्ञात लोक सेवकों और गैर-सरकारी व्यक्तियों के विरुद्ध मामले के संबंध में और ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्ता तेलंगाना राज्य में करती है।

[फा. सं. 228/87/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 9th October, 2024

S.O. 2182.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Central Government with the consent of the State Government of Telangana, issued vide Notification No. G.O.Ms.No.63 dated 18.09.2024, Home (Special) Department, hereby extends the powers and jurisdiction of all the members of the Delhi Special Police Establishment in the whole of the State of Telangana regarding the case against Brig. Vikram Ahooja (now Retd.), Maj. Gen. (then Brig.) Gaurab Roy (now retd.) & Brig. N. Rangarajan (now retd.) and unknown public servants and unknown private persons for the irregularities committed in operating/management of CQAS Employees Credit Cooperative Society (CECCS), Secunderabad and Misappropriation of Public Fund in the formation, operation and management of Defence Inspection Employees Cooperative Society (DIECHS), Hyderabad, in relaxation of the orders issued in G.O.Ms.No.51, Home (Special) Department, dated 30.08.2022 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/87/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 11 अक्तूबर, 2024

का.आ. 2183.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम,1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्यपाल द्वारा अधिसूचना सं. ईसीएफ-552422/105-ए, दिनांक 9 अक्तूबर, 2024, राजनीतिक (ए) विभाग:दिसपुर के माध्यम से जारी असम राज्य सरकार की सम्मति से, बहुत बड़ी मात्रा में धनराशि का कपटपूर्ण लेनदेन और व्यापार में संलिप्त हो कर अविनियमित जमा के संबंध में असम राज्य के विभिन्न थानों में भारतीय दंड संहिता (आईपीसी)/भारतीय न्याय संहिता (बीएनएस) और निम्नलिखित 41 पुलिस मामलों से संबंधित प्राथमिकियों में दर्ज अन्य अधिनियमों और किसी अन्य कानून की प्रासंगिक धाराओं के अंतर्गत किए गए अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त असम राज्य में करती है।

क्र.सं.	मामला संख्या ,कानून की धारा & थाना
1	पलटनबाजार थाना-एफआईआर संख्या 0288/2024, बीएनएस 2023 की धारा 3(5), 316(5), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21
2	डिब्रुगढ थाना-एफआईआर 0354/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21, 23 और भारतीय न्याय संहिता, 2023 की धारा 316(2), 318(2)
3	डिब्रुगढ थाना, एफआईआर संख्या 0352/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21, 23 और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4)
4	भांगागढ़ थाना-एफआईआर संख्या 130/2024, भारतीय दंड संहिता की धारा 120 बी, 420, 406 और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3)
5	तेजपुर थाना-एफआईआर संख्या 0533/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3)
6	सिलचर थाना-एफआईआर संख्या 0789/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21, 22, 23 और आईपीसी, 1860 की धारा 406, 420
7	नागांव थाना-एफआईआर संख्या 0859/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 61(2), 316(2), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 22, 23
8	अजारा थाना-एफआईआर संख्या 184/2024, बीएनएस, 2023 की धारा 61(2)/ 316(2)/318(4) सपठित अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1) (2) (3)/23
9	डेरगांव थाना-एफआईआर संख्या 0140/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 120बी, 406, 420, 406
10	गीतानगर थाना-एफआईआर संख्या 0174/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 61(2)(ए), 111(3), 316(5), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(3), 23
11	बोरहुला थाना-एफआईआर संख्या 0028/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21 और 23

12	बिजनी थाना-एफआईआर संख्या 0074/2024, आईपीसी की धारा 420/406/34 और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21
13	मुशालपुर थाना-एफआईआर संख्या 0102/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(2) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(2), 21(3)
14	हैलाकांडी थाना-एफआईआर संख्या 0201/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(3), 22, 23 और आईपीसी, 1860 की धारा 406, 420, 34
15	तमरहाट थाना-एफआईआर संख्या 0055/2024, आईपीसी, 1860 की धारा 120 बी, 419, 406, 420 इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम की धारा 4,5 तथा अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1, 2, 3)(3), 22, 23
16	करीमगंज थाना-एफआईआर संख्या 0534/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 120 बी, 420, 406, 409
17	सिबसागर थाना-एफआईआर संख्या 0113/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2023 की धारा 21(1), 21(2), 21(3) और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(1)
18	दलगांव थाना-एफआईआर संख्या 0184/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2023 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 406, 420
19	धुबरी थाना-एफआईआर संख्या 0310/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(3), 23, 25 और आईपीसी, 1860 की धारा 120 बी, 409, 420, 506
20	सीआईडी साइबर थाना-एफआईआर संख्या 0012/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 111(2)(बी), 318(4), 316(2), 316(5) और सूचना प्रौद्योगिकी अधिनियम, 2000 की धारा 66 तथा अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और 23
21	दलगांव थाना-एफआईआर संख्या 0182/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 406, 420
22	रंगापारा थाना-एफआईआर संख्या 0066/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4)
23	दलगांव थाना-एफआईआर संख्या 0185/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी 460 की धारा 406, 420
24	लखीपुर थाना-एफआईआर संख्या 0224/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 61(2), 316(5), 318(3), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 22, 23
25	मिसामारी थाना-एफआईआर संख्या 0090/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4)

26	पुलिबोर थाना-एफआईआर संख्या 0092/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21, 23, 24 और आईपीसी की धारा 120 बी, 420, 406, 409
27	तमरहाट थाना की एफआईआर संख्या 0068/2024, आईपीसी की धारा 120 बी, 420, 406, 347, 307 और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1, 2, 3), 22, 23
28	मिसामारी थाना-एफआईआर नंबर 0089/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4)
29	दलगांव थाना-एफआईआर संख्या 0186/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 406, 420
30	चारिदुआर थाना-एफआईआर संख्या 146/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3)
31	काजलगांव थाना-एफआईआर संख्या 87/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 318(4), 316(2), 316(5), 3(5)
32	दलगांव थाना-एफआईआर संख्या 0183/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 406, 420
33	होजई थाना-एफआईआर नंबर 0260/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 318(4), 316(5) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(3), 22, 23, 26
34	गौरीपुर थाना-एफआईआर संख्या 0268/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 23 और आईपीसी, 1860 की धारा 406, 417, 420, 506
35	गोलकगंज थाना-एफआईआर संख्या 0201/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 23 और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 1(3), 316(2), 318(4), 351(2)
36	गोलकगंज थाना-एफआईआर संख्या 0203/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 23 और भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 1(3), 316(2), 318(4), 351(2)
37	करीमगंज थाना-एफआईआर संख्या 0543/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3) और आईपीसी, 1860 की धारा 120-बी, 420, 406, 409
38	दिसपुर थाना-एफआईआर संख्या 0934/2024, अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3), 22, 23 और आईपीसी, 1860 की धारा 406, 420
39	तेजपुर थाना-एफआईआर संख्या 527/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 316(2), 318(4), 3(5) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1), 21(2), 21(3)
40	रुपहीहाट थाना-एफआईआर संख्या 0250/2024, भारतीय न्याय संहिता (बीएनएस), 2023 की धारा 61(2)(ए), 316(2), 318(4) और अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21, 22, 23

41	दिसपुर थाना-एफआईआर संख्या 849/2024, आईपीसी की धारा 120 बी/420/ 468/471 सपठित असम जमाकर्ताओं के हितों का संरक्षण (वित्तीय स्थापना में) (संशोधन) अधिनियम, 2013 की धारा 5 जमा अविनियमित निक्षेप स्कीम पाबंदी अधिनियम, 2019 की धारा 21(1)/21(2)/21(3)/23

तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध।

[फा. सं. 228/84/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 11th October, 2024

S.O. 2183.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Assam, issued vide Notification No. eCF-552422/105-A, Dated 9th October, 2024**,** Political (A) Department : Dispur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment throughout the State of Assam for the investigation of offences under relevant sections of IPC/BNS and other Acts as mentioned in the FIRs and any other law related to the 41 nos. of police cases as below, which are registered at various police stations in the state of Assam concerning unregulated deposits involving fraudulent transactions and trading of large sums of money.

Sl. No.	Case No., Section of Law and Police Station
1.	Paltan Bazar PS-FIR No. 0288/2024, Section 3(5),316(5), 318(4) BNS, and Section 21 of Banning of Unregulated Deposit Scheme Act, 2019
2.	Dibrugarh PS-FIR No. 0354/2024, Section 21, 23 of Banning of Unregulated Deposit Scheme Act, 2019, and Section 316(2), 318(2) of Bharatiya Nyaya Sanhita (BNS), 2023
3.	Dibrugarh PS-FIR No. 0352/2024, Section 21, 23 of Banning of Unregulated Deposit Scheme Act, 2019, and Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023
4.	Bhangagarh PS-FIR No. 130/2024, Section 120(B), 420, 406 IPC and Section 21(1),21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019.
5.	Tezpur PS-FIR No. 0533/2024, Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3) of the Banning of Unregulated Deposit Scheme Act, 2019.
6.	Silchar PS FIR No.0789/2024, Section 21, 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019 and Section 406, 420 IPC 1860.
7.	Nagaon PS-FIR No.0859/2024, Section 61(2), 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019.
8.	Azara PS-FIR No. 184/2024, U/S-61(2)/316(2)/318(4) BNS 2023 R/W sec.21(1)(2)(3)/23 of The Banning of Unregulated Deposit schemes Act, 2019.
9.	Dergaon PS-FIR No.0140/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019 and Section 120-B, 420, 406 of IPC 1860.
10.	Geeta Nagar PS- FIR No.0174/2024, Section 61(2)(a), 111(3), 316(5), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023 and Section 21(3), 23 of Banning of Unregulated Deposit Scheme Act, 2019.
11.	Borhulla PS-FIR No. 0028/2024, Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023 and Section 21, 23 of Banning of Unregulated Deposit Scheme Act, 2019.
12.	Bijni PS-FIR No. 0074/2024, Section 420/406/34 IPC and Section 21 of Banning of Unregulated Deposit Scheme Act, 2019.
	Mushalpur PS-FIR No. 0102/2024, Section 316(2), 318(2) of Bharatiya Nyaya Sanhita (BNS), 2023

13.	and Section 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019.
14.	Hailakandi PS-FIR No. 0201/2024, Section 21(3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019 and Section 406, 420, 34 IPC 1860.
15.	Tamarhat PS-FIR No.0055/2024, Section 120-B, 419, 406,420 IPC 1860 and Section 4, 5 Prize Chit and Money Circulation schemes Banning Act 1978 and Section 21(1,2,3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019
16.	Karimganj PS-FIR No.0534/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019 and Section 120-B, 420, 406, 409 IPC 1860.
17.	Sivasagar PS-FIR No.0113/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019 and Section 316(2), 318(1) of Bharatiya Nyaya Sanhita (BNS), 2023.
18.	Dalgaon PS-FIR No. 0184/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019 and Section 406, 420 IPC 1860.
19.	Dhubri PS-FIR No.0310/2024, Section 21(3), 23, 25 of Banning of Unregulated Deposit Scheme Act, 2019 and Section 120-B, 409, 420, 506 IPC 1860.
20.	CID Cyber PS-FIR No. 0012/2024, Section 111(2)(b), 318(4), 316(2), 316(5) of Bharatiya Nyaya Sanhita (BNS), 2023 and Section 66 of Information Technology Act, 2000, Section 21(1), 21(2),21(3),23 of The Banning of Unregulated Deposit Scheme Act,2019.
21.	Dalgaon PS-FIR No.0182/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 406, 420 IPC 1860.
22.	Rangapara PS-FIR No.0066/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023.
23.	Dalgaon PS-FIR No. 0185/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 406, 420 IPC 1860.
24.	Lakhipur PS-FIR No.0224/2024, Section 61(2), 316(5), 318(3), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019.
25.	Missamari PS-FIR No.0090/2024, Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019.
26.	Pulibor PS-FIR No. 0092/2024, Section 21, 23, 24 of Banning of Unregulated Deposit Scheme Act, 2019 and Section 120-B, 420, 406, 409 IPC
27.	Tamarhat PS-FIR No.0068/2024, Section 120-B, 420, 406, 347, 307 IPC 1860 and Section 21(1,2,3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019
28.	Missamari PS-FIR No.0089/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023.
29.	Dalgaon PS-FIR No. 0186/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 406, 420 IPC 1860.
30.	Chariduar PS -FIR No. 146/2024, Section 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3) of the Banning of Unregulated Deposit Scheme Act, 2019.
31.	Kajalgaon PS-FIR No. 0087/2024, Section 318(4), 316(2), 316(5), 3(5) of Bharatiya Nyaya Sanhita (BNS), 2023.
32.	Dalgaon PS-FIR No.0183/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 406, 420 IPC 1860.
33.	Hojai PS-FIR No. 0260/2024, Section 318(4), 316(5) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(3), 22, 23, 26 of Banning of Unregulated Deposit Scheme Act, 2019.
34.	Gouripur PS-FIR No.0268/2024, Section 21(1), 21(2), 21(3), 23 of Banning of Unregulated Deposit Scheme Act, 2019, and Section 406,417,420, 506 of IPC 1860.
35.	Golakganj PS-FIR No. 0201/2024, Section 21(1), 21(2), 21(3), 23 of Banning of Unregulated Deposit Scheme Act, 2019, and Section 1(3), 316(2), 318(4), 351(2) of Bharatiya Nyaya Sanhita

	(BNS), 2023.
36.	Golakganj PS-FIR No. 0203/2024, Section 21(1), 21(2), 21(3), 23 of Banning of Unregulated Deposit Scheme Act, 2019, and Section 1(3), 316(2), 318(4), 351(2) of Bharatiya Nyaya Sanhita (BNS), 2023.
37.	Karimganj PS-FIR No.0543/2024, Section 21(1), 21(2), 21(3) of Banning of Unregulated Deposit Scheme Act, 2019, and Section 120-B, 420, 406, 409 IPC 1860.
38.	Dispur PS-FIR No. 0934/2024, Section 21(1), 21(2), 21(3), 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019, 2. Section 406,420 IPC 1860.
39.	Tezpur PS-FIR No. 527/2024, Section 316(2), 318(4), 3(5) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21(1), 21(2), 21(3) of the Banning of Unregulated Deposit Scheme Act, 2019.
40.	Rupahihat PS-FIR No.0250/2024 Section 61(2)(a), 316(2), 318(4) of Bharatiya Nyaya Sanhita (BNS), 2023, and Section 21, 22, 23 of Banning of Unregulated Deposit Scheme Act, 2019.
41.	Dispur PS -FIR No. 849/2024, U/S 120B/420/468/471 IPC, R/W Sec. 5 of Assam Protection of Interest of Depositors (In financial establishment) (Amendment) Act 2013, added sec. 21(1)/21(2)/21(3)/23 of Banning of Unregulated Deposit Scheme Act, 2019

and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/84/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 15 अक्तूबर, 2024

का.आ. 2184.—केन्द्र सरकार एतद द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए छत्तीसगढ़ राज्य सरकार की अधिसूचना सं. एफ-4-164/गृह-सी/2012, दिनांक 09.09.2024, गृह (सी-अनुभाग) विभाग, मंत्रालय, महानदी भवन, नवा रायपुर, अटल नगर के माध्यम से जारी सम्मति से केन्द्र सरकार, केन्द्रीय सार्वजनिक क्षेत्र उपक्रमों के कर्मचारियों एवं गैर-सरकारी व्यक्तियों (पृथक रूप से कार्य कर रहे हों अथवा केन्द्र सरकार/केन्द्र सरकार उपक्रमों के कर्मचारियों के साथ मिलकर) द्वारा कथित तौर पर किए गए अपराधों अथवा समय-समय पर यथा संशोधित उक्त अधिनियम की धारा 3 के तहत अधिसूचित अपराधों या अपराधों की श्रेणियों का अन्वेषण करने के लिए, यद्यपि इस शर्त के अधीन कि राज्य सरकार की पूर्व लिखित अनुमति के बिना राज्य सरकार द्वारा नियंत्रित लोक सेवकों से संबंधित मामलों में ऐसा कोई अन्वेषण नहीं किया जाएगा, दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त छत्तीसगढ़ राज्य में करती है। विभागीय अधिसूचना सं. एफ-4-164/एच.सी./2012, दिनांक 19.07.2012, 27.07.2012 तथा 19.10.2012 द्वारा किसी अन्य अपराध हेतु मामला दर मामला आधार पर प्रदान की गई सम्मति भी लागू रहेगी।

[फा. सं. 228/07/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 15th October, 2024

S.O. 2184.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (No. 25 of 1946), the Central Government with the consent of the State Government of Chhattisgarh, issued vide Notification No. F-4-164/Home-C/2012, dated 09.09.2024, Home (C-Section) Department, Mantralay, Mahanadi Bhawan, Nava Raipur, Atal Nagar, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Chhattisgarh for investigation of the offences or classes of offences notified under Section 3 of the said Act, as amended from time to time, alleged to have been committed by employees of the Central Government, Central Public Sector Undertakings and Private persons (whether acting separately or in conjunction with the employees of Central Government/Central Government Undertakings) subject however, to the condition that no such investigation shall be taken up in cases relating to the public servants controlled by the Government of Chhattisgarh except with the prior written permission

of the State Government. Consent accorded on case to case basis for any other offence by the Departmental Notification No. F-4-164/H.C./2012, dated 19.07.2012, 27.07.2012 and 19-10-2012 shall also remain in force.

[F. No. 228/07/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

नई दिल्ली, 16 अक्तूबर, 2024

का.आ. 2185.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए आदेश सं. : शिकायत-1924/सीआर.74/पोल-2,दिनांक 30.08.2024, गृह विभाग, द्वितीय तल, मंत्रालय (मुख्य भवन), मुंबई के माध्यम से जारी महाराष्ट्र राज्य सरकार की सम्मति से श्रीमती भाग्यश्री नवटके एवं अन्य के विरुद्ध भारतीय दंड संहिता की धारा 34, 120-बी, 166, 167, 177, 193, 201, 203, 219, 220, 466, 474 के अंतर्गत अपराधों के लिए बंड गार्डन थाना, पुणे शहर में दर्ज सी.आर. सं. 240/2024, दिनांक 27.08.2024 तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र तथा अन्वेषण के दौरान सामने आने वाले अन्य अपराध(धों) एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/81/2024-एवीडी-II)]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 16th October, 2024

S.O. 2185.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Maharashtra, issued vide Order No: Complaint-1924/CR.74/POL-2, Dated 30.08.2024, Home Department, Second Floor, Mantralaya (Main buldg.), Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Maharashtra for conducting investigation in C.R. No. 240/2024 dated 27.08.2024 registered at Bund Garden Police Station, Pune City against Smt. Bhagyashree Navtake and others for offences u/s 34, 120-B, 166, 167, 177, 193, 201, 203, 219, 220, 466, 474 of IPC and any other offence(s) which may come to light including any attempt, abetment and/or conspiracy, in relation to or in connection with one or more such offences and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/81/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 25 नवम्बर, 2024

का.आ. 2186.—केंद्रीय सरकार ने पेट्रोलियम और खनीज पाइपलाइन (भूमि मे उपयोग के अधिकार के आर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में, तमिलनाडु राज्य क्षेत्र के भीतर तक अधिनियम के अधीन, कोची सेलम पाइपलाइन प्राइवेट लिमिटेड (केएसपीपीएल) की कोची कोयम्बटूर सेलम एल पी जी पाइपलाइन के लिए, तमिलनाडु राज्य में सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए केएसपीपीएल ने प्रतिनियुक्ति पर का आ 1436 दिनांक 24/07/2024 भारत के राजपत्र संख्या 29 दिनांक 27/07/2024 के अंतर्गत अधिसूचित सक्षम प्राधिकारी

श्रीमती एस विष्णुवर्धिनी, डिप्टी कलक्टर, के स्थान पर श्रीमती एम कोहिला, डिप्टी कलक्टर, जिनकी नियुक्ति नोडल अधिकारी कोची सेलम पाइपलाइन प्रोजेक्ट कोयम्बटूर है, को प्राधिकृत करती है।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-12031/1/2021-ओआर-II/ई-39085]

शशि शेखर सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 25th November, 2024

S.O. 2186.—In pursuance of clause (a) of section 2 of the petroleum and mineral pipelines (acquisition of right of user in land) Act, 1962(50 of 1962), the Central Government hereby authorizes Smt M Kohila, Deputy Collector, in place of earlier notified competent authority Smt S Vishnuvardhini, Deputy Collector Vide S.O. No. 1436 dated 24/07/2024 published in Gazette of India No. 29 dated 27/07/2024 on deputation to Kochi Salem Pipeline Private Limited (KSPPL), who is appointed as Nodal Officer for Kochi Salem Pipeline Project Coimbatore, to perform the functions of the Competent authority, in the state of Tamilnadu for Kochi Salem Pipeline Private Limited's Kochi-Coimbatore-Salem LPG Pipeline under the said act.

This notification will be effective from the date of its issue.

[F. No. R-12031/1/2021-OR-II/E-39085]

SHASHI SHEKHAR SINGH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 22 अक्तूबर, 2024

का.आ. 2187.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (237/2012) प्रकाि" ात करती है।

[सं. एल - 12012/63/2011- आई आर (बी-II)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd October, 2024

S.O. 2187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 237/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Punjab and Sind Bank and their workmen.

[No. L-12012/63/2011- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer, Chandigarh.

ID No. 237 of 2012

Jasvir Singh son of Tara Singh, resident of Village Kutti (Kishanpura), Tehsil & District Bathinda, Punjab.

…… Workman.

Versus

Punjab and Sind Bank through its Zonal Manager, Zonal Office Bathinda, Punjab & Ors.

……Management

Present: Sh. Rehmat Ali AR for the Workman.

Sh. Ranjan Lohan AR for the management.

AWARD

Passed On:05.09.2024

A reference was received from the Government of India vide Letter No.12012/63/2011-IR(B-II), Dated 13.03.2012 under Clause (d) sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

"**Whether the action of the Management of the Zonal Manager, Punjab & Sind Bank, Zonal Office, Bathinda/Manager, Punjab & Sind Bank, Currency Chest, Bathinda in terminating/discontinuing the services of Sh. Jasvir Singh son of Sh. Tara Singh, EX-Driver w.e.f. 16.04.2010 is just, fair and legal? What relief the workman concerned is entitled to**?

1. Both the parties were put to notice and workman Sh. Jasvir Singh upon appearance filed statement of claim with the averments that he was employed as Driver on permanent basis since January 2002. He was drawing a salary of Rs.4,375/- per month. It has also alleged that service of the workman was terminated on 16.04.2010 without any notice, enquiry and charge sheet etc. The juniors to the workman are still in service and after the termination of the workman, other persons have been employed in his place. The workman has challenged his termination to be illegal with the law and made a prayer for his reinstatement with continuity of service and full back-wages.

2. The management contested the case by filing written statement wherein certain preliminary objections were taken. It is stated that workman was engaged as causal workman as a Driver purely on temporary basis as a stop gap arrangement. It is denied that he was employed as Driver on permanent basis since January 2002. There was no regular appointment of the workman nor the post of Driver was advertised. No application were invited nor any interview was conducted at the time of his engagement. It is a matter of record that Branch Manager is not even a competent authority under the Rules to make any appointment of Driver. The management has also disputed the number of working days. The management admitted that workman has served with a legal notice dated 24.04.2010 on the management. It is maintained that claim is not maintainable, hence claim be dismissed.

3. Parties were put to lead evidence.

4. The workman in support of his case filed Ex.WW1/A alongwith document Exhibit W-1 and W-2 and Mark WW-1 and close his evidence.

5. Respondent has filed affidavit of Prem Chand as MW1/A and alongwith documents M-1 to M-3 closed its evidence.

6. While arguing the case, learned counsel for AR of the workman contended that the workman had joined with the respondent as a driver in January 2002 and his services were terminated orally on 16.04.2010. He further contended that at the time of his termination, he was drawing Rs.4,375/- per month. There was no compliance of Section 25F of the Act by the respondent and even in place of the workman some other person was appointed namely Lakha Singh which amounts to unfair labour practice and thus, the workman was entitled for reinstatement with full back wages. The workman tendered in examination in-chief his affidavit alongwith documents Ex.W1 and Ex.W2. Perusal of Section 25F of the Act and from the bank statements Ex.W1 and Ex.W2 it is revealed that the workman was paid monthly payment of Rs.4,375/- by the respondent and it is proved that he had worked as driver for 240 days of service in each completed year. Thus, he may be awarded reinstatement with full back wages from the due date alongwith other attendants.

7. On the other hand, learned counsel for the respondent has argued that the workman has not completed 240 days service from the date of termination in the preceding year and he was never appointed by issuing any appointment letter to him and thus, he is not entitled for any relief, as claimed.

8. The first point for determination is whether the claimant comes within the definition of "workman" as is defined in Section 2(S) of the Act. It is mentioned here that claimant was appointed as Driver as per his claim petition and affidavit submitted before the Tribunal. In plain words the claimant was performing his duties as labourer/unskilled worker. He was not in supervisory or administrative post requiring him to perform only administrative post requiring him to perform only administrative duties. While interpreting Section 2(S) Hon'ble Supreme Court in the case of **Devinder Singh Vs Municipal Councilm, Sanaur,AIR 2011Supreme Court 2532**, has observed as follows:-

"**The source of employment, the quantum of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a causal employee or for doing duty for fixed hours is not a workman.**"

9. Thus Hon'ble Supreme Court has clarified that the definition of workman also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion, the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

10. The brief facts regarding the payment of salary by the management is proved by Ex.W-1 and Ex.W-2, bank statements of the workman and even the month-wise salary has been produced by the workman for payment of the amount from 01.03.2002 to 02.04.2010 vide Mark WW-1 which clearly shows that the workman was receiving monthly payment from the respondent. Further, he was working under the control of respondent and this fact is proved from the cross-examination of MW-1 Prem Chand who admitted, workman was engaged temporarily in the year Jan, 2002. The workman was driver on cash van of the bank. No notice was given to the workman while terminating his service as no notice was required. This witness has also admitted that no appointment letter was issued to him. Thus it is also proved that there was non-compliance of Section 25-F of the Act. However, it is not proved the who was appointed in place of the workman and unfair practice was made by the respondent.

11. Admittedly, the respondent is an industry and there was non-compliance of Section 25-F of the Act. The workman has already been able to prove that he worked continuously for a period of 240 days prior to his termination of his services by respondent no.1 on 16.04.2010 as he was receiving regular wages from 2002 till 2010 as is proven from bank statement of workman W-1 and W-2. There is violation of Section 25-F of the Act and in view of the judgment of Hon'ble Apex Court in **Bharat Sanchar Nigam Ltd. Vs Man Singh, 2012(1) SCT 641**, it is not necessary that relief of reinstatement has to be given as a matter of right. Reliance can also be placed upon **Jasbir Singh Vs Haryana State Agriculture Marketing Board, 2009(3) SCT 790**, under which it has been held that in the recent past, there had been a shift in the legal position and the Court had consistently taken the view that relief by way of reinstatement with back wages is not automatic and may he wholly inappropriate in a given fact situation, even though termination of an employee was in contravention of the prescribed procedure. Compensation instead of reinstatement was held to be the prudent relief to meet the ends of justice. Moreover, Hon'ble Supreme Court of India in case titled **District Development Officer & Anr. Vs Satish Kantilal Amrelia, Civil Appeal Nos. 19857-19858 of 2017; decided on 28 November , 2017** has held

"that the reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization. Thus he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstatement such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose".

"In view of above discussed above workman entitled for compensation as he was working on daily wages"

12. Learned counsel for the workman has also argued that for rendering one year service workman should be granted @ Rs.1 lac per year and since the workman has worked for about nine years and therefore, compensation of Rs.9 lac be awarded to the workman in view of the judgment of Hon'ble High Court in case titled ***Municipal Council Dina Nagar Vs Presiding Officer Labour Court… on 29 November, 2014*.**

13. On the other hand, learned counsel for the respondent has relied upon judgment titled ***Incharge Officer and Anr. Vs Shankar Shetty Law Finder DocId # 215469*** wherein the Hon'ble Supreme Court of India has held that relief of reinstatement granted to the workman by High Court is not justified and instead monetary compensation of Rs.1 lac in lieu of reinstatement shall be appropriate, just and equitable.

14. It is added here that in the present case workman has continuously worked for 9 years as driver as is clear from his salary statement Ex. W-1 & W-2. He was not working intermittently, thus, the case law cited by Ld. Counsel for the respondent regarding award of compensation titled as ***Incharge Officer and Another (Supra)*** is not attracted in the fact of the present case. However, in the present case, the case law cited by Ld. Counsel for the appellant i.e. ***Municipal Council Dina Nagar (Supra)*** is squarely applicable wherein it has been held as follow:

> *After carefully considering the entire gamut of facts, we direct that the category of respondent-workmen who had been working as clerks with the appellant would be entitled to compensation of Rs.1,25,000/- for each completed year of service rendered by them. So far as the category of respondent-workmen who had served the appellant as peons before they were relieved, are concerned, they are held entitled to compensation of Rs.1,00,000/- for each completed year of service rendered by them with the appellant. For the period of service beyond a completed year, the respondent-workmen shall be entitled to prorate payment as granted above.*

Applying the ratio of above law cited, since workman was daily wager so it would be in the fitness of thing if he is awarded Rs.6,00,000/- as total lump sum amount as compensation.

15. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2024

का.आ. 2188.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (88/2015) प्रकाि" ात करती है।

[सं. एल - 12012/73/2015- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 25th November, 2024

S.O. 2188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.88/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/73/2015- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/88/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Manoj Kachwaha

S/o. Leela Dhar Kachhwaha

VIII, Sakwah, PO: Purwa

Mandla (M.P.)

Workman

Versus

1. Shri P. Pradeep Kumar (M.D. S.B.I.)

Regional Head Office,

Arera Hills, Bhopal (M.P.)

2. Shri Sanjay Kolharkar

Branch Manager (Dy. Manager)

State Bank of India, Padav Branch

Mandla (M.P.)

Management

A W A R D

(Passed on this 14th day of October-2024.)

As per letter dated 21/09/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/73/2015/IR(B-I) dt. 21/09/2015. The dispute under reference related to :-

1. ***"Whether termination of services of workman Shri Manoj Kumar Kachwaha w.e.f. 03.02.2015 by an oral order without having any sufficient cause is justified ? if not, to what relief the workman is entitled for ?***
2. ***As workman has continuously worked from 13.04.2009 to 03.02.2015 i.e. for more than 6 years as defined u/s. 25(B) of Industrial Dispute Act, 1947. Whether the action of the management of SBI in continuing Mr. Manoj Kumar Kachwaha as casual worker/temporary worker for the last 6 years is justified or not ? Whether Mr. Manoj Kumar Kachwaha is entitled for regularization or not ?***
3. ***Whether the action of management in continuing Mr. Manoj Kumar Kachwaha as casual worker/temporary worker (canteen boy) for the last 6 years amounted to unfair labour practice as specified under Fifth Schedule of Industrial Dispute Act, 1947 or not ? If yes, what penal action the management bank is entitled for ?"***

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

In short, the case of the workman is that he has engaged in the Branch by the Branch Manager on 14.03.2009 as daily wager messenger and worked till 03.02.2015 continuously. His services were terminated by Bank under an oral order without any notice or compensation, which is against Section 25-F & 25-G of the Act, hence against law. The workman has requested that holding the action of management disengaging him against law, he be held entitled to be reinstated with all back wages and benefits and also to be regularized in service.

According to management, the workman did not work continuously for 240 days in the year preceding the date of his termination. He was a casual labour, engaged not by Bank but by the Local Implementation Committee which is a welfare committee of staff members, used to run canteen for the Bank staff. Management has requested that the reference be answered against the workman.

In evidence, the workman did not file any affidavit. He did file photocopy documents, which were not admitted by the management but did not care to prove it. Management also did not file affidavit of its witness as his examination in chief.

None was present for workman side at argument stage. No written argument was filed. Management learned Counsel Shri Vijay Tripathi submitted his oral arguments.

I have gone through the record.

The reference itself is the issue for determination.

The burden to proof his case on workman side. The engagement of the workman by management is not denied. What is denied is that the workman was engaged by the Bank. According to management, he was engaged by the Local Implementation Committee to run the staff canteen. There is no oral evidence in support of the allegations that the workman worked continuously for 240 days in the year preceding the date of his termination as employee of the Bank. Hence, the workman is held to have failed in proving his continuous engagement for 240 days by the Bank in any year.

Hence, holding the case of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 14/10/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 नवम्बर, 2024

का.आ. 2189.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे मेल सेवा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (105/2018) प्रकाि" ात करती है।

[सं. एल - 41011/17/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 27th November, 2024

S.O. 2189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.105/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Railway Mail Service their workmen.

[No. L-41011/17/2018- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of September, 2024

INDUSTRIAL DISPUTE No. 105/2018

Between:

Sri Md. Kaleemudding & 60 Others,

C/o Sri Janardhan, social Workers,

H.No. 18-121/2, Kamalanagar,

Dilsukhnagar, Hyderabad-500060.

.Petitioner

AND

1. The Sr Superintendent
   Railway Mail Service,
   Hyderabad Sorting Division,
   Hyderabad-500027.
2. The Head Record Officer,
   Hyderabad Soring Division,
   GPO Builiding, 2nd floor,
   Hyderabad-500001.
3. The Chief Post Master General,

AP Circle, Dak Sadan, Abids,

Hyderabad-500001.

……Respondents

Appearances:

For the Petitioner : Party in person

For the Respondent: Shri Ravinder Viswanath, Adv.

A W A R D

The Government of India, Ministry of Labour by its order No.L-41011/17/2018 -IR(B-I) dated 30.10.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Railway Mail Service, and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of Sr. Superintendent, Rail Mail Services, Hyderabad in reducing the working hours of casual labourers from 10 hours to 07 hours is fair while the conciliation proceedings are pending before the conciliation Officer, Proper and justified. If not, to what relief the workmen are entitled to?'

The reference is numbered in this Tribunal as I.D. No. 105/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for Petitioner evidence. Despite sufficient opportunity accorded to him, the Petitioner did not adduce any evidence to substantiate his claim. Perused the record. Since the Petitioner has not substantiated his claim by any evidence, therefore, a 'No-claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 25th day of September, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 नवम्बर, 2024

का.आ. 2190.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे मेल सेवा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (104/2018) प्रकाि" ात करती है।

[सं. एल - 41011/16/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 27th November, 2024

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.104/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Railway Mail Service their workmen.

[No. L-41011/16/2018- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of September, 2024

INDUSTRIAL DISPUTE No. 104/2018

Between:

Sri Md. Kaleemudding & 60 Others,

C/o Sri Janardhan, social Workers,

H.No. 18-121/2, Kamalanagar,

Dilsukhnagar, Hyderabad-500060.

..… .Petitioner

AND

1. The Sr Superintendent
   Railway Mail Service,
   Hyderabad Sorting Division,
   Hyderabad-500027.
2. The Head Record Officer,
   Hyderabad Soring Division,
   GPO Builiding, 2nd floor,
   Hyderabad-500001.
3. The Chief Post Master General,
   AP Circle, Dak Sadan, Abids,
   Hyderabad-500001.

… …Respondents

Appearances:

For the Petitioner : Party in person

For the Respondent: Shri Ravinder Viswanath, Adv.

A W A R D

The Government of India, Ministry of Labour by its order No.L-41011/16/2018 -IR(B-I) dated 30.10.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Railway Mail Service, and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of Sr. Superintendent, Rail Mail Services, Hyderabad in reducing the working hours of casual labourers from 10 hours to 07 hours is fair while the conciliation proceedings are pending before the conciliation Officer, Proper and justified. If not, to what relief the workmen are entitled to?'

The reference is numbered in this Tribunal as I.D. No. 104/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for Petitioner evidence. Despite sufficient opportunity accorded to him, the Petitioner did not adduce any evidence to substantiate his claim. Perused the record. Since the Petitioner has not substantiated his claim by any evidence, therefore, a 'No-claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 25th day of September, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 नवम्बर, 2024

का.आ. 2191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **वेस्टर्न कोलफील्ड** के प्रबंधतंत्र के संबद्ध नियोजको और **उनके कर्मकारों** के बीच, अनुबंध में निर्दिश्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के** पंचाट **(एलसी-आर/26/2021)** को प्रकाि" ात करती है, जो केन्द्रीय सरकार को **28/11/2024** को प्राप्त हुआ था।

[सं. एल-22012/8/2021-आईआर (सीएम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 28th November, 2024

S.O. 2191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/R/26/2021*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Western Coalfield Limited** and **their workmen**, received by the Central Government on **28*/11/2024.***

[No. L-22012/8/2021-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/26/2021

Present: P.K.Srivastava

H.J.S..(Retd)

President

Coal Mazdoor Union

Ambada, Distt.- Chhindwara-480334

Workman

Versus

Manager

Vekoli, Tansi Khan Kanhan Area

PO: Rampur, Tehsil – Junnardev

Distt.- Chhindwara (M.P.) - 480001

Management

(J U D G E M E N T)

(Passed on this 23rd day of October-2024)

As per letter dated 19/04/2021 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/8/2021/IR(CM-II) dt. 19/04/2021. The dispute under reference relates to:

"प्रबंधक विकोलि, तानसी खान कन्हान क्षेत्र, द्वारा श्री कैलाश पिता रम्मू, डीलर को उनके लापता रहने के दौरान कार्य से अनुपस्थित रहने के कारण सेवा से बर्खास्त (dismissal) *किया जाना क्या न्यायोचित है, यदि नहीं, तो क्या सेवा समाप्ति आदेश दिनांक 13.7.2018 निरस्त किए जाने योग्य है ? "*

After registering a case on the basis of the reference, notices were sent to the parties and were served. Workman side did not appear and did not file any statement of claim. Management filed its written statement of Defense.

Rebutting the allegations of the workman, management has taken a case in their written statement of defense that the workman was absenting himself from duty unauthorizedly w.e.f. 12.02.2013. He was issued charge-sheet dated 01.06.2013 under Clause-26.24 of the Certified Standing Orders. A departmental inquiry was conducted. The workman did not appear in the inquiry inspite of notices served on him. Hence, the inquiry was conducted in his absence. The Inquiry Officer submitted his inquiry report dated 09.06.2014 holding the charge of grave misconduct under Clause-26.24 of the Certified Standing Orders by way of unauthorizedly and willfully absenting from work by the workman. In between, the workman filed an application on 26.03.2014 seeking permission to resume his duties alongwith medical certificate. He was permitted to resume duties subject to outcome of the inquiry. The copy of inquiry report was sent to the workman by registered post, but returned undelivered, hence it was published in news paper. The workman did not joining his job inspite of permission granted to him.

It is further the case of management, that again a charge-sheet was issued on 24.01.2017 for the same charges for unauthorized and willfull absence from work, within the period 12.02.2016 to December 2016. No reply was submitted by the workman, hence management decided to conduct another inquiry. Notice of the inquiry was sent to the workman by registered post on his address mentioned in his service records, but returned unserved, hence notice of the memo of inquiry was published in news paper. The workman did not appear and inquiry proceeded ex-parte against him. The Inquiry Officer submitted his inquiry report holding the charges proved against the workman. A copy of the inquiry report was sent to the workman to have his say on the inquiry report, but no reply was received.

Further, according to management, the workman was issued a charge-sheet on 19.04.2018 for the same charges with respect to unauthorized absent from June 2015 to March 2018. Again no reply was sent by the workman, hence management decided to conduct the inquiry, this time Smt. Sarita Bachley claiming herself to be wife of the workman submitted an application dated 14.05.2018 before the Inquiry Officer stating that the workman is missing and hence, the inquiry could not conducted against him.

The Inquiry Officer submitted his report after conducting the inquiry holding the workman guilty of the charges. The workman was issued another show-cause notice on 18.06.2018 with a copy of inquiry report but no reply was sent by the workman. Hence, Management passed the order of termination of his services on 13.07.2018. Thus, according to management, the workman is a habitual absentee, who did not improve himself inspite of opportunity given. According to management, there is no illegality in the inquiry, charges have been rightly held proved and punishment is proportionate to the charges.

The workman did not file any evidence.

Management has filed copy of termination order and complete inquiry papers. Management also filed affidavit of its witness Krishnakant Dubey. The workman did not avail the opportunity of his cross examination, hence opportunity was closed.

I have heard argument of learned Counsel Shri Neeraj Kewat for the management and have gone through the record.

On perusal of records in the light of arguments, following three points arise for determination :-

1. ***Whether, the inquiry was conducted legally ?***
2. ***Whether, the finding of the Inquiry Officer is perverse ?***
3. ***Whether, the punishment is proportionate to the charge proved ?***

For the sake of convenience, these three points are being taken together.

The burden to prove point no.-1 is on workman. By not filing even the statement of claim or any evidence, the workman has failed to discharge this burden. From perusal of inquiry papers, there appears no illegality or irregularity causing prejudice to the workman, hence the departmental inquiry is held just legal and proper.

As regards to second point, charges are found well proved on the basis of evidence available in the inquiry papers, hence the finding of the Inquiry Officer holding the charge under Clause-26.24 of Certified Standing Orders is held correct in law and facts.

As regards to point no.-3, keeping in view the nature of charges proved and the previous conduct of the workman in repeating the same misconduct again and again, the punishment of dismissal of his services is held proportionate to the misconduct.

In the light of above provisions and findings recorded above. The action of management in terminating the service of the workman is held legal and justified in law. The workman is held entitled to no relief.

Accordingly, the Reference is answered as follows :-

A W A R D

Holding the action of management of Western Coalfields Limited, Chhindwara in terminating the workman Kailash w.e.f. 13.07.2018 is justified in law, the workman is held entitled to no relief. No order as to cost.

DATE:- 23/10/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2192.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, देहरादून;महाप्रबंधक, भारत संचार निगम लिमिटेड, पटेल नगर, देहरादून; उपमंडल अभियंता, भारत संचार निगम लिमिटेड, पटेल नगर, देहरादून,**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री गोपेश्वर प्रसाद बडोनी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या 35 of 2009) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-40012/67/2009-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2192.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35 of 2009) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager, Bharat Sanchar Nigam Limited, Dehradun ;The General Manager, Bharat Sanchar Nigam Limited, Patel Nagar, Dehradun; The Sub-Divisional Engineer, Bharat Sanchar Nigam Limited, Patel Nagar, Dehradun ,and Shri Gopeshwar Prasad Badoni, Worker,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-40012/67/2009-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I. D. No.35 of 2009

Ref. No. L-40012/67/2009-IR(DU) dated 03.09.2009

BETWEEN

Shri Gopeshwar Prasad Badoni S/o Shri Kamleshwar Prasad Badoni

Mothrowal Dandi, Dehradun

AND

1. Chief General Manager, Bharat Sanchar Nigam Limited

   Windlass Shopping Complex, Rajpur Road, Dehradun

2. The General Manager, Bharat Sanchar Nigam Limited

   E-10, Exchage, Patel Nagar, Dehradun

3. The Sub-Divisional Engineer, Bharat Sanchar Nigam Limited

   M-1, E-10, Exchange, Patel Nagar, Dehradun.

AWARD

By means of Order/letter No. L-40012/67/2009-IR(DU) dated 03.09.2009 the appropriate government referred the following dispute to this Tribunal for adjudication:-

> "*Whether the action of the management of Bharat Sanchar Nigam Limited, Dehradun in terminating the services of Sri Gopeshwar Prasad Badoni w.e.f. 10.06.2004 is legal and justified? If not, what relief the workman is entitled to?"*

Facts in brief of the case:

On behalf of the claimant on 29.9.2009 a claim statement, filed and the facts stated therein, in brief, are that the claimant was appointed on 16.7.1999 as daily wages/Causal Driver under Sub-divisional Engineer-I, BSNL, E-10 Exchange, Patel Nagar, Dehradun.

His services were orally terminated without giving any notice and conducting inquiry on 10.6.2004. When no heed was paid by the respondents, then the claimant approached the then Hon'ble High Court of Uttranchal at Nainital by way of filing a Writ Petition No.444 (SS) of 2004 (Balraj and others Versus Union of India & others) and on 26.6.2004 the Hon'ble High Court of Uttranchal passed an order, the operative portion of which reads as under:-

> "*Accordingly the order dated 16.6.2004 is modified and it is provided that in case the work is available with the respondents and they need to engage the drivers, petitioners shall be engaged and shall be paid wages accordingly to their suitability*."

In spite of the order passed by the Hon'ble High Court of Uttranchal at Nainital, although, 16 posts of Driver were existing with the respondents, but the claimant was not allowed to join his duties, In the said factual background the claimant filed the present I.D. Case before this Tribunal with the following reliefs:-

> "14. निर्णय का भी प्रतिपालन नहीं किया गया हैं। यह कि एस०डी०ई० (फोन्स) देहरादून द्वारा प्रार्थी का नियुक्ति तिथि 16.7.99 से मार्च 2003 तक कार्य दिवसों का विवरण दिया गया हैं, जिसमें प्रार्थी श्रमिक ने 240 दिन से कई अधिक दिन कलैण्डर वर्ष में कार्य किया गया हैं।
>
> 15. यह कि प्रार्थी श्रमिक को ए०सी०जी०-17 में वेतन का भुगतान दिया जाता हैं, जो प्रतिवादी पक्ष के नियत्रंण में हैं, जिन्हें मंगाकर पुष्टि की जा सकती हैं।
>
> अतः महोदय से प्रार्थना हैं कि प्रार्थी श्रमिक को निरन्तरता के आधार पर पूर्ण वेतन सहित सेवा पर बहाल करने की कृपा करेगें, यदि विवाद में कोई समझौता न हो तो वाद को अभिनिर्णय हेतु प्रेषित करने की कृपा करेगें।"

The respondnet, in rebuttal, has filed its statement of defence, denying claim of workman, inter alia stating therein that the claimant filed the statement of claim concealing the true and correct facts and as such the same is liable to be dismissed. It has also been concealed that the name of the claimant is mentioned at Serial No.2 as petitioner in the Writ Petition No,959 of 2004 (SS) (Kuldeep Kumar & others Versus Union of India & others) and the same was dismissed by the Hon'ble High Court vide its judgment and order dated 4.4.2007 keeping in view the judgment passed by the Hon'ble Supreme Court in the case of Secretary Karanataka Government Versus Uma Devi.

The respondent has further stated that the claimant had been engaged on daily wage basis purely on temporary basis and as no work was existing, hence, it was not possible to continue the engagement of the claimant on daily wage basis. As the claimant was engaged on daily wage basis, hence, no question arises either to conduct any inquiry or to give notice to the claimant. It was also submitted on behalf of respondents that the Divers have already been appointed on all the sanctioned posts of Drivers and no work is available at present. On the above said strength the respondents prayed for dismissal of the claim filed by the claimant.

In addition to documentary evidence led by the parties, the evidence on affidavit was filed by the claimant Sri Gopeshwar Prasad Badoni and on behalf of respondents Sri Pradeep Kumar Sharma, Assistant General Manager (Admin.).

Further in the cross examination of workman it was submitted as under:-

"Casual labour के रूप में काम करना बताया है. मुझे नहीं पता कि BSNL में वर्ष 1999 से कोई नई गाड़ी आई है. स्वयं कहा नई गाड़ी आई है. मुझे नहीं पता कि विभाग में दो-चार पुरानी गाड़ियों के अतिरिक्त नई गाड़ियां और उनके ड्राइवर ठेकेदारी के माध्यम से प्रयोग किया जा रहे हो"

Moreover on behalf of respondent in support of his case, the evidence had been filed by one Sri P.K. Sharma stating therein as uner:-

5. यह कि वर्ष 1999 में कुछ अतिरिक्त आकस्मिक कार्य आ जाने पर, वादी गोपेश्वर प्रसाद बडोनी को अस्थायी तौर पर, दैनिक श्रमिक के रूप में चालक का कार्य करने के लिये रखा गया था।

6. यह कि दैनिक श्रमिक को दिहाड़ी पर रखते समय ही बता दिया जाता है कि उन्हें काम के हिसाब से ही दिहाड़ी का भुगतान किया जायेगा। वर्तमान समय में दैनिक श्रमिक को रखा ही नही जाता है क्योकि वर्तमान समय में ठेकेदार के द्वारा ही किराये पर ड्राइवर सहित वाहन उपलब्ध कराये जाते हैं।

7. यह कि वादी ने आकस्मिक कार्य की अधिकता के समय, आवश्यकतानुसार दिहाड़ी / दैनिक वेतन भोगी चालक के रूप में कार्य किया था।

8. यह कि वित विभाग के आदेश माह अगस्त 1999 से, विभाग में नए वाहनों की खरीदारी पर रोक लगा दी गयी थी। तथा वर्तमान में कारपोरेट ऑफिस नई दिल्ली द्वारा दो विभागीय वाहन उपल्बध कराये गये हैं जो विभागीय ड्राइवर द्वारा चलाए जा रहे हैं।

9. यह कि काफी समय पूर्व से. सभी सरकारी विभागों की तरह, प्रतिवादी विभाग में भी वाहन, ठेकेदारों से चालक सहित किराए पर लिए जा रहे हैं।

10. यह कि ठेकेदार के द्वारा किराए पर लिए गए वाहन के चालक को, उनका नियोजक ठेकेदार ही वेतन देता है और ठेकेदार के द्वारा ही ड्राइवर रखे जाते हैं। विभाग का, चालक की नियुक्ति या सेवा मुक्ति से कोई सम्बन्ध नहीं होता है। यह कि वर्तमान में विभाग में 23 गाड़िया किराये पर चल रही है और सभी गाड़ियां ठेकेदार के द्वारा लगायी गयी हैं।

11. यह कि वादी एवं उसके साथियों ने माननीय उच्च न्यायाल नैनिताल के समक्ष 2004 में एक याचिका संख्या 444 / (एसएस)/2004 बलराज एवं अन्य यूनियन आफ इण्डिया योजित की थी, जो दिनांक 26.06.2004 को निर्णित की जा चुकी है। इस आदेश में कहा गया है कि यदि याचिगण (वादी) के लिए कार्य उपलब्ध हो या चालक की आवश्यकता हो तो उन्हें रखा जाये।

12. यह कि वादी वादी ने मई 1994 में दिहाड़ी शुरू नहीं की थी।

13. यह कि वादी ने अपने अन्य साथियो के साथ, एक अन्य याचिका सख्या 959/ एस एस/2004 कुलदीप कुमार व अन्य बनाम भारत संघ भी, माननीय उच्च न्यायालय के समक्ष योजित की थी। जो सचिव, कर्नाटक शासन बनाम उमा देवी, के विवाद में दी गयी व्यवस्था के अनुरूप दिनांक 04.04.2007 को याचीगण के विरूध निर्णित की जा चुकी है।"

Thus keeping in view the said facts the point to be considered in the present case is to the effect that whether the workman has completed 240 days in the last 12 months and if so then his services are retrenched in violation of provisions of Section 25-F of the Act.

In order to decide the point in question it is appropriate to have a glance of Section 2(oo), 2(s) and Section 25-F of I.D. Act, 1947 which reads as under:-

*"**2. (oo) "retrenchment"** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –*

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

***2(s) "workman"** means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--*

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

***25F. Conditions precedent to retrenchment of workmen**.-*

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

Hon'ble Delhi High Court in the case of ***Sarita Tiwari v. Aastha Garments reported in 2024 (180) FLR 649*** after taking into consideration the definition of retrenchment as provided under Section 25-F of the Act, held as under:-

"*20. It is well-settled that the burden to prove that the workman was in continuous employment of 240 days with the management is on the workman herself. This principle was reiterated by the Hon'ble Supreme Court in the landmark judgement of R.M. Yellatti v. Asstt. Executive Engineer, (2006) 1 SCC 106; the relevant paragraph is extracted below:-*

"17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this By:MANISH KUMAR W.P.(C) 5369/2019 8 of 16 Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the

workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

21. These principles were reiterated by the Hon'ble Supreme Court in Krishna Bhagya Jala Nigam Ltd. v. Mohd. Rafi, (2009) 11 SCC 522, and the law on this subject was traced as under in paragraphs 8 to 10:

"8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [(2004) 8 SCC 161] the position was again reiterated in para 6 as follows : (SCC p.163)

'6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v.S.T. Hadimani [(2002) 3 SCC 25]. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.'

9. In Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram [(2004) 8 SCC 246] the position By:MANISH KUMAR W.P.(C) 5369/2019 10 of 16 was again reiterated in para 11 as follows : (SCC p. 250) '11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195] wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard : (SCC p. 198, para 15)

"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."'

10. In RBI v. S. Mani [(2005) 5 SCC 100] a three- Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal's view that the burden was on the employer was held to be erroneous. [...]"

22. In light of the law laid down by the Hon'ble Supreme Court, the initial question to be examined is whether the petitioner discharged her burden of proving that she was in continuous employment for at least 240 days in the year preceding her date of termination."

A Division Bench of Allahabad High Court in a case of Ghanshyam Prajapati Versus Union of India reported in 2024 (1) FLR 131, after taking into consideration has held that if a workman has not completed 240 days in the last preceding year is not entitled for the benefit of Section 25-F of the Act.

Hon'ble Apex Court in the case of Pradeep Versus Maganese ore (India) Ltd. & others reported in (2022) 3 SCC 683 after taking into consideration the provisions of Section 106 of Evidence Act held that burden lies on a person who wants to get the benefit of a particular thing on the basis of facts of the case.

Reverting to the facts of the present case from the pleadings made on behalf of claimant and from the documents/oral evidence as well as keeping in view the pleadings made on behalf of claimant; and evidence led by the parties it is clearly established that the workman-claimant failed to prove and establish that he has worked for 240 days in the last 12 months in the preceding year before the retrenchment of his services on 10.6.2004. As such the claimant is not entitled for any relief because there is no violation of provisions of Section 25-F of the I.D. Act 1947.

ORDER

In view of above said findings once the claimant failed to prove and establish that his services while discharging the duties on the post Driver was retrenched violating the provisions of Section 25-F of the I.D. Act 1947, so he is not entitled for the relief as per the reference order. Present I.D. Case is dismissed. No order as to costs.

Lucknow

15th July, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2193.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **मुख्य महाप्रबंधक, बीएसएनएल, दूरसंचार, यूपी (पूर्व) परिमंडल, लखनऊ; प्रधान महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री किशन पाल सिंह, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **02 of 2007**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-40012/81/2005-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2193.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02 of 2007) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager, BSNL, Telecom, UP (East) Circle, Lucknow ; The Principal General Manager, Telecom District, BSNL, Lucknow, and Shri Kishan Pal Singh, Worker,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-40012/81/2005-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.02 of 2007

Reference No.L-40012/81/2005-IR(DU) dated 14.12.2006

BETWEEN

Sh. Kishan Pal Singh S/o Shri Pop Singh, 514, Sanjay Colony Arthala, Mohan Nagar, Near Shiv Mandir, Ghaziabad(U.P.)

AND

1. The Chief General Manager, BSNL, Telecom, UP (East) Circle, Lucknow.
2. The Principal General Manager, Telecom District, BSNL, Lucknow.

JUDGEMENT

By means of order/reference no. L-40012/81/2005-IR(DU) dated 14.12.2006, the Central Government considered it desirable to refer the dispute for adjudication to the following effect:-

> "*Whether the action of management of Chief General Manager, BSNL, Lucknow/Principal General Manager, Telecom District, Bharat Sanchar Nigam Limited, Lucknow in terminating the services of their workman Sri Kishan Pal Singh, w.e.f. 1.7.2000 is legal and justified? If not, to what relief the workman is entitled to?"*

In pursuance to the said reference the statement of claim was filed on behalf of workman/applicant before this Tribunal on 14.2.2007 inter-alia stating that he was appointed as Labour/Casual Labour in the Bharat Sanchar Nigam Limited, U.P. East Circle, Lucknow (hereinafter referred to as 'BSNL') and was engaged in the said capacity in the office of Principal General Manager Telecom District, Lucknow on 1.7.1996.

On behalf of workman it has further been pleaded that in the said capacity he worked and discharged his duties with the entire satisfaction of superior authorities.

The workman also pleaded that by means of D.O. Letter No.269-10/89-STN-II dated 14.8.1998 the D.D.G. (Personnel), Sanchar Bhawan, New Delhi sought information about the temporary status in respect to the workers who were engaged at Lucknow and completed 240 days in a calendar year.

In pursuance thereto the Deputy General Manager (Administration) Office of Chief General Manager, U.P. Circle, Lucknow by means of its letter dated 3.9.1998 sought the list of Casual labour in Lucknow Circle/Unit.

Accordingly vide letter dated 16/21.3.2000 the Chief General Manager Telecom U.P. (East) Circle, Lucknow sent the list regarding the employees working as Casual Labour in order to grant them temporary status. In the said list the name of workman does not find place. Aggrieved by the same the workman filed an Original Application No.414 of 2000 before the Central Administrative Tribunal.

In view of the said factual background on behalf of the workman it was pleaded that the said action of the respondents retrenching/terminating the services of workman on 01.07.2000 without following the provisions of Section 25-F of Industrial Tribunal Act 1947, is contrary to the said circular.

Accordingly, it has been prayed by the workman/Sri Kishan Pal Singh that impugned action on the part of respondents thereby retrenching his services from 1.7.2000, as such, is against the provisions of Section 25-F of the Act, may be set aside; and respondent be directed to reinstate him in service and also to grant temporary status w.e.f. 12.2.1999.

Submissions on behalf of respondent:

Sri S.Banerjee, Learned Counsel, on the basis of pleadings in the written statement, submits that the applicant along with two others Sri Jagroop Yadav and Sri Bhoodev Prasad filed an Original Application No.414 of 2000 before the Central Administrative Tribunal, Lucknow Bench, Lucknow (Jagroop Yadav & another Versus Union of India & others) disposed of by way of Order dated 23.11.2001, the relevant portion, quoted below:-

> "*The three applicants of the present O.A. have claimed grant of temporary status w.e.f. 12.2.79, the date on which their juniors were granted temporary status and have also claimed regularization of service.*
>
> *2. The claim of applicant no.1 is that he was engaged as casual labour in May, 98 and has worked for various periods mentioned in para 4.2 of the O.A. The applicant claims that he is still continuing in service but the applicant has not been granted temporary status though he has completed more than 240 days in each year of his service period.*
>
> *3. Similarly the applicant no.2 claims to have engaged on 1.7.96 on casual basis and has worked during different periods, details of which are given in para 4.3 of the O.A. The applicant claims that he is still working and has not been granted temporary status.*
>
> *4. Similarly the applicant no.3 claims to have been engaged n 1.3.97 for the periods details given in para 4.4 of the O.A. It is alleged that the applicant worked for more than 240 days every year and is still working. Still he has not been granted temporary status. The claim is that under grant of Temporary Status and Regularization Scheme, all the three applicants are entitled for grant of temporary status and for regularization. The benefits of grant of D.A., H.R.A. & C.C.A. etc. which are admissible to a casual labour with temporary status are being denied to the three applicants because their case for grant of temporary status has not been correctly considered by the respondents*."
>
> "*9. After counsel for the parties above been have been heard, I am of the view that the claim of the applicants require due examination and verification from the records of the respondents. Consequently, the O.A. is decided with a direction to the applicants that the applicants shall individually make a detailed*

representations along with all the documents in support of their claim within a period of one month from the date of communication of this order. The respondents shall within six months from the date of receipt of the said representation verify the correctness and genuineness of the documents of the claim of the applicants and thereafter to pass appropriate orders. In case the claim of the applicant is found correct, they may be granted relief by the respondents as per rules. Whatever decision is taken by the respondents shall be communication separately to the three applicants. The O.A. stands decided accordingly. Costs easy."

Learned Counsel for the respondents Sri S. Banerjee further submits that in pursuance to the directions given by the Central Administrative Tribunal, the competent authority i.e. Assistant General Manager (Administration), Principal General Manager, Telecom, Lucknow considered the representation of the workman and rejected the same vide letter dated 20.9.2002, reads as under:-

"*Your representation dated nil addressed to P.G.M.T.D., Lucknow was received in the office on 18.12.2001 regarding reinstatement and regularization in services as TSM, has been duly examined in depth and records were verified in compliance of the order of Hon'ble CAT, Lucknow dated 23.11.2001 in Case No.OA-114/2000/Jagroop Yadav & others Versus Union of India & others. It has been found that the certificates and ACG-17, enclosed with your representation in support of your claim, are not authentic. The concerned officers have denied issuance of such certificates. As per office records regarding actual working days, you have not completed 240 days in any financial year i.e. 1995-96 to 2000-2001.*

Therefore, on careful consideration of all the facts, your representation is rejected by competent authority. You are hereby informed that your claim for reinstatement & regularization in service is rejected.

Kindly acknowledge receipt."

On behalf of the respondents it was also submitted that arising out of order dated 23.11.2001 passed by the Central Administrative Tribunal in Original Application No.414 of 2000 (Jagroop Yadav & another Versus Union of India & others), the applicant along with others filed CCP No.110/2002 (Jagroop Yadav & 2 others Versus Sri S.P. Kalsi & 2 others), in which an order dated 4.12.2002 was passed which reads as under:-

"*For applicant Sri Surendran P.*

For respondent Sri K.K. Pandey.

On behalf of L/C for applicant, Sri Surendran P. States at the bar that the order dt.23.11.2001 passed in O.A. No.414 of 2000 has since been complied with by the respondents. A compliance report has also been enclosed by the respondents along with short C.A. whereby the representation of the applicant has been decided and rejected. Since the directions given by this Tribunal in O.A. No.414/2000 have been complies with, no case of contempt is made out, CCP is accordingly dismissed and notices are discharged."

Accordingly, learned counsel for respondent, submitted that applicant in view of the above said facts is not entitled for any relief especially keeping in view the order dated 20.9.2002 (Annexure-2 to the written statement) by means of which the representation of applicant was rejected by the competent authority that he did not complete 240 days in any financial year i.e. 1995-96 to 2000-2001.

In addition to the above said facts Sri S.Banerjee, Learned Counsel for the respondents also placed relevant award given by the CGIT-cum-Labour, Lucknow (this Tribunal) dated 20.1.2004 passed in I.D. No.23 of 2004 (Sri Jagroop Yadav Versus The Chief General Manager, Telecommunication, East, Lucknow & another) wherein this Tribunal as per the reference quoted below:-

"*Whether action of Management of Chief General Manager, BSNL, Lucknow in verbally terminating the services of Sri Jagrup Yaav S/o Sri Ram Manohar Yadav, Casual Workman w.e.f. 14.7.2000 is legal and justified? If not to what relief the workman is entitled*?" passed the following orders:-

"*21. Only evidence regarding so called signatures is Hand Writing Expert Report W065 filed by the petitioner before this Tribunal. Hand Writing Expert Sri Satish Dayal has thoroughly crossed examined on behalf of the management. It may be quite pertinent to mention here that the above Expert is not a Govt. Expert, neither he has worked in any Govt. Labs. Whether his experience as Hand Writing Expert has ever been recognized by Central Government or State Govt. has also not been duly informed to this Tribunal/Court. It is settled law that the Hand Writing Expert Report in the absence of any cogent evidence does nt have binding. The fact of varacity in the alleged signatures, has been thoroughly confronted by Learned AR of the management in the cross examination. Therefore, only on the basis of Hand Writing Expert Report the version taken by the workman, cannot be blindly believed.*

22. The fact whether the workman had worked for more than 240 days in the preceeding one year, from the relevant date has to be determined on the basis of cogent reliable evidence. This material fact cannot be ignored under such circumstances. Principles laid down by the Hon'ble Supreme Court in the following

cases is quite material but it is not legally or factually possible to give any benefit to the workman, in the alleged evidence adduced by both the Tribunal;

1. *(2002)3 SCC RFO Versus S.T. Hadimani Page 25*
2. *(2005) 8 SCC Surendra Nagar District Panchayat Versus Jetha Bhai Pitambarbhai Page 450*
3. *(2006) 1, SCC R.M. Yellati Vs. Executive Engineer, Page 106*
4. *(2010) 1 SCC (L&S) Jagbir Singh Vs. Haryana State Agriculture Board, Page 545*

23. After having heard the intellect arguments of both the parties at length and peruse of the record in the light of pronouncements laid down by the Hon'ble Supreme Court, it is inferred that the question of oral termination of service of the petitioner w.e.f. 14.7.2000 cannot be adjudicated in favour of the petitioner. There was no illegality or irregularity in the alleged order if any passed by the management. The petitioner is not entitled to any relief."

Accordingly, Sri S. Banarjee, learned counsel for respondent submits that the present claim petition filed by workman lacks merit, liable to be dismissed.

Finding & conclusion:

In spite of notice none is present on behalf of workman; accordingly, I have heard Sri S. Banarjee, learned counsel for respondent and perused the records.

Undisputed facts of the present case are that Sri Kishan Pal Singh was initially engaged as a causal labour in the BSNL on 1.7.1996 and in the said capacity he started working. During the intervening period by means of D.O. Letter No.269-10/89-STN-II dated 14.8.1998 the D.D.G. (Personnel), Sanchar Bhawan, New Delhi sought the information about the temporary status in respect to the workers who were engaged at Lucknow and completed more than 240 days in a calendar year. In order to grant them temporary status, the relevant information was sent by the authorities of BSNL at Lucknow.

However, in the list sent by the authorities of BSNL at Lucknow the name of applicant did not find place and as per his case he was eligible to consider the grant of temporary status as he had completed 240 days in the last preceding 12 months. Aggrieved by the said facts Sri Kishan Pal Singh along with 02 others had filed an Original Application No.414 of 2000 before the Central Administrative Tribunal, Lucknow Bench, Lucknow (Jagroop Yadav & another Versus Union of India & others) which was disposed of by way of Order dated 23.11.2001.

Further in pursuance to the directions given by the Central Administrative Tribunal, the competent authority considered the representation of the workman and rejected the same vide letter dated 20.9.2002, the relevant portion of which is quoted below:-

"*The concerned officers have denied issuance of such certificates. As per office records regarding actual working days, you have not completed 240 days in any financial year i.e. 1995-96 to 2000-2001.*

Therefore, on careful consideration of all the facts, your representation is rejected by competent authority. You are hereby informed that your claim for reinstatement & regularization in service is rejected."

In view of the said factual background the main question to be considered by this Tribunal on the basis of arguments advanced by Sri S. Banerjee that as the applicant who was casual worker, his services were retrenched and while doing so there is any violation of Section 25-F of the Act 1947, taking into consideration the argument raised by learned counsel for respondent that the competent authority while rejecting representation of the applicant held that he did not complete 240 days in any financial year i.e. 1995-96 to 2000-2001 and also the fact that on the same footing a case of one Sri Jagroop Yadav who had filed the I.D. Case No. 23 of 2004 (Sri Jagroop Yadav Versus The Chief General Manager, Telecommunication, East, Lucknow & another) before this Tribunal, rejected by means of award dated 20.1.2004 (relevant portion quoted hereinabove).

Reverting to the facts of present case besides the pleadings made on behalf of parties in order to support their contentions, the workman on 14.2.2007 filed the list of documents. In the said list of documents, there exists a document (Annexure-1 : 6/4) which reads as under:-

"*Office of the SDE Phones, Installation, Mahanagar, Lucknow*

This is to certify that Sri Kishan Pal Singh, S/o Sri Roup Singh, R/o Officer's Colony, G.P.O. Lucknow has worked as 'Workman" in this unit on daily wages w.e.f. Ist July, 1996 @ 65/- per day.

His work and conduct is quite satisfactory.

(Signature) illegible

(Seal) Sub Divisional Engineer

(EWSD)(Installation)

Mahanagar Telephone Exchange

Lucknow"

Besides above, the workman in his evidence on affidavit (examination in chief) as well as in his cross examination has established that he has worked from 1.7.1996 to 30.6.2000 by stating that –

> मैनें अपने नियोजन दिनांक 1.7.96 से 30.6.2000 तक है, के सम्बन्ध में अभिलिखित प्रस्तुत किये है। मैनें 240 दिन लगातार कलेण्डर ईअर में काम करने के कागजात पत्रावली में दाखिल किये हैं। मैनें आई0टी0आई0 के उत्तीर्ण होने के सम्बन्ध में कागज पेश किया है। मुझे गोमती नगर टेलीफोन एक्चेंज से आदेश मिलता था और काम के लिए मुझे जेडी का आदेश मिलता था काम पर जाता था काम पर जाने का आदेश मौखिक होता था। हर जगह से मुझे काम पर जाने के लिए मौखिक आदेश मिलता था।

There is another document contained as Annexre-2 : 6/5 to 6/8) along with the list of documents which is a list in respect to the working of applicant Sri Kishan Pal Singh at BSNL, Lucknow and from the perusal of said list, the position which emerges out is to the effect that from 1.7.1999 to 30.6.2000 he worked for more than 240 days during the last preceding 12 months from the date of retrenchment of his services as Casual labour. The list is duly signed by the authorities of BSNL i.e. Junior Telecom Officer, Telephone Exchange, Gomti Nagar, Lucknow.

A copy of said document was given to respondent but they did not deny the said material document by way of any cogent evidence in order to prove that the said material piece of evidence filed by the applicant in support of his case, is not correct in spite of the fact that they can do so by filing relevant material which are possessed them i.e. attendance register and payment register etc. To disprove case of workman that he had not worked for more than 240 days in the last preceding 12 months prior to retrenchment of his service.

Because the Hon'ble Apex Court in the matter of ***Gopal Krishnaj Ketkar Versus Mohamed Haji Latif and others reported in AIR 1968 SC 1413*** has held that, if a party in possession of best evidence, which would throw a light on the issue in controversy withheld the same, Court ought to draw an adverse inference against the party notwithstanding that onus of proof does not lie on him. The party who is in possession of best evidence cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

The Hon'ble Madhya Pradesh High Court in the case of ***Chairman, Institute of Engineers, Jabalpur Versus Kailash Sen reported in 2024(181) FLR 300***, it has been held that it is not in dispute that workman was in employment with respondent since the date of engagement and prior to retrenchment of his services he has continuously worked for 240 days in the last preceding 12 months. The said plea taken by the workman has to be categorically denied and disprove by the respondent who has sufficient documentary evidence to demonstrate that employee has not worked for more than 240 days in a calander year by producing attendance and payment register. If same is not done, it will be presumed that the respondent has failed to dislodge the claim of the workman that he has worked for more than 240 days in last preceding 12 months.

A Division Bench of Hon'ble Telangana High Court in the case of ***S. Srinivas Versus The Union of India & others reported in 2024 LLR 860***, it has been held that it is trite law that a party invoking/relying on certain plea has to make an avberment with details to sustain such a plea and has to adduce material to establish allegations made and the burden is on the party to lead and prove that it is right. (see State of Uttar Pradesh v. Kartar Singh, AIR 1964 SC 1135).

Hon'ble the Apex Court in the case of ***Pradeep v. Manganese Ore (India) Limited & ors. 2022 (3) SCC 68***3 has held that as per section 106 of Indian Evidence Act, the burden lie on a party to prove and establish the plea taken by it.

Accordingly in view of the said facts the argument, advanced by the Learned Counsel for the respondent Sri S.Banerjee that order dated 20.09.2002 passed by competent authority in pursuance to order dated 23.11.2001 passed by Central Administrative Tribunal in Original Application No.414 of 2000 and award dated 20.1.2004 passed by this Tribunal in I.D. Case No. 23 of 2004 has got no force because, in the said matter the workman was not able to prove that he had worked for more than 240 days in the last preceding 12 months, cannot derive any benefit whereas in the present case the workman Sri Kishan Pal Singh has clearly established and proved that he has worked for more than 240 days in the last preceding 12 months prior to date of his oral termination on 01.07.2000; hence, the same is rejected.

Thus in view of above once action on the part of respondent thereby retrenching the services of the workman without following the provisions of Section 25-F of the Act 1952 is contrary to law, then what what relief the workman is entitled in pursuance to the reference No.L-40012/81/2005-IR(DU) dated 14.12.2006.

Answer to the said question finds place in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal reported in (2013) 14 SCC 543***, the respondent was engaged as a Mistri

on muster roll basis, whose services were terminated. The workman was neither given one month's notice nor one month's salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25- F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the Hon'ble High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

In the case of ***U.P. State Road Transport Corporation vs. Man Singh reported in 2006 (111) FLR 323(SC)***, the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Hon'ble Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Hon'ble Supreme Court held that the interest of justice would be sub-served, if the Corporation was made to pay a sum of Rs. 50,000/- to the workman.

In the case of ***Nand Kumar vs. State of Bihar and others reported in (2014) 5 SCC 300***, the Hon'ble Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1***, where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible.

In the case of ***State of Orissa vs. Mamata Mohanty reported in (2011) 3 SCC 436***, the Hon'ble Supreme Court has held that the appointment made without advertisement was in violation of Article 14 and 16 of the Constitution. Para 35 and 36 of the said judgment is reproduced below as follows:-

> "*35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).*
>
> *Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that*

every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

Further the Madhya Pradesh Hon'ble High Court in the case of ***Branch Manager, Central Bank of India Tilak Chowk Vidisha Versus Pradeep Kumar Sen reported in 2024 (181) FLR 809*** held as under:-

"*22. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-*

> *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."*

23. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

24. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

> *"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)*
>
> *"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.*
>
> *30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)*
>
> *'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")?The course of the decisions of this Court in recent years has been uniform on the above question.*
>
> *3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335, paras 7 & 14)*
>
> *"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*
>
> *14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded.This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."*

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:(SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

25. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar"employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and (3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

A division Bench of Hon'ble Gujarat High Court in the case of ***Range Forest Officer Versus Virjibhai Ranchhodbhai & another*** reported in 2024 (182) FLR 179 has held as under:-

6.1. The shift in law on this count was highlighted by the Supreme Court in Bhopal Vs. Santosh Kumar Seal [(2010) 6 SCC 773] relying on its own another decision in Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], observing that the relief of payment of lump-sum compensation could be a proper relief in a given set of facts and circumstances.

"In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [2006 (1) SCC 479], Uttaranchal Forest Development Corpn. v. M.C. Joshi [2007 (9) SCC 353], State of M.P. v. Lalit Kumar Verma [2007 (1) SCC 575], M.P. Admn. v. Tribhuban [2007 (9) SCC 748], Sita Ram v. Moti Lal Nehru Farmers Training Institute [2008 (5) SCC 75], Jaipur Development Authority v. Ramsahai [2006 (11) SCC 684], GDA v. Ashok Kumar [2008 (4) SCC 261] and Mahboob Deepak v. Nagar Panchayat, Gajraula [2008 (1) SCC 575].)"

6.2. In subsequent decision in Rajasthan Development Corporation Vs.Gitam Singh [(2013) 5 SCC 136], the Supreme Court stated,

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the

dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

6.3. In Uttaranchal Forest Development Corporation Vs. M.C.Joshi [(2007) 9 SCC 353], the Supreme Court held that the question of grant of compensation in place of relief of reinstatement could be guided by relevant factors to be that whether the appointment was made in accordance with the statutory Rules or not.

6.4. It is to be observed that the decisions of the Supreme Court have carved out the circumstances and aspects which may guide the discretion of the court in awarding lump-sum compensation instead of granting relief of reinstatement even if there is a breach of Section 25F, 25G and 25H of the Industrial Disputes Act.

6.5. These factors were highlighted in Bantva Municipality Vs. Amritlal Harji Chauhan being Special Civil Application No.9135 of 2013 decided on 31.3.2014 as under :-

"(i) The fact that the workman is daily-rated workmen, not permanently employed; (ii) He is not holding a permanent post; (iii) Nature of his employment; (iv) Span of service, viz. The period during which he worked upto the date of termination of services; (v) Manner and method of appointment. Whether it was a backdoor entry; (vi) The time gap from the date of termination; (vii) Delay in raising the Reference is also considered to be a germane factor;(viii) Any special feature peculiar to the facts of the particular case.

For instance, in Bhurumal (supra), the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology."

6.6. In the case of BSNL v. Bhurumal, reported in (2014) 7 SCC 177, it was categorically observed that even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself."

Thus it is clearly established, on the basis of material on record that Sri Kishan Pal was engaged in the Institute as Casual Labour on 01.07.1996; and his services were retrenched on 01.07.2000. As such as per laws which are referred hereinabove the workman Sri Kishan Pal Singh is only entitled for compensation, as his service was retrenched without complying the provisions of Section 25-F of Industrial Disputes Act 1947 but he is not entitled for reinstatement as prayed by him.

AWARD

For the foregoing reasons as the services of Sri Kishan Pal Singh, who was casual employee, engaged on 01.07.1996 and his services were retrenched w.e.f. 01.07.2000 without following the provisions of Section 25-F of Industrial Disputes Act 1947, hence, he is entitled for compensation amounting to Rs.1.50 Lacs (Rupees Three Lacs & Fifty thousand) but not for other relief's (reinstatement)

The Reference No.L-40012/81/2005-IR(DU) dated 14.12.2006 is answered accordingly.

Lucknow

18th September, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2194.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **मंडल अभियंता (एएचक्यू), सेंट्रल, सी/ओ निदेशक (ओएफसी), सीई गोमती नगर टेलीफोन एक्सचेंज, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मनजीत सिंह, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **25 of 2003**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-40012/169/2002-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2194.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25 of 2003) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Divisional Engineer (AHQ), Central, C/o Director (OFC), CE Gomti Nagar Telephone Exchange, Lucknow, and Shri Manjeet Singh, Worker,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-40012/169/2002-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

I.D. No.25 of 2003

Reference No.L-40012/169/2002 IR(DU) dated 5.2.2003

Sri Manjeet Singh, S/o Sri Sardar Mohan Singh,

R/o LD-227, Sector-F, LDA Colony, Kanpur Road,

Lucknow

-----Applicant/Workman

Versus

The Divisional Engineer (AHQ),

Central, C/o Director (OFC), CE

Gomti Nagar Telephone Exchange,

2nd Floor, Lucknow

----Respondents

JUDGMENT

Heard Sri S.K. Shukla, Learned counsel for the Applicant and Sri A.P. Singh Learned Counsel for the Respondent and gone through the records.

In the present by means of order/reference no.L-40012/169/2002 IR(DU) dated 5.2.2003, the Central Government, considered it desirable to refer the dispute for adjudication to the following effect:-

> *"Whether the action of the Bharat Sanchar Nigam Ltd. in orally terminating the services of Sri Manjeet Singh, S/o Sri Sardar Mohan Singh, w.e.f. 01.09.2001 is legal and justified? If not to what relief the workman is entitled?"*

On 16.5.2017 this Tribunal passed an award and the relevant portion of the same is reproduced below:-

> "*3. As pr claim statement W-12, the petitioner has stated in brief that he has worked as Driver on the permanent post under the subordination of opposite party since 10.12.1998 to August 2001, he was asked to drive Matador No.UP 32T 9782 and sometimes six wheel Truck UP 32T 3567. The workman has further asserted that during his employment no charge sheet was issued, his carrier has been blotless, even then Sri H.L. Maurya JTO (Store) Lucknow by an oral order removed him from the service without assigning any reason, next day and on subsequent dates he went to the office to perform his duties but his request was not accepted and he was not reinstated. No prior notice was issued, neither any salary in lieu of notice or retrenchment compensation was paid. Moreover, another workman was employed in his place.*
>
> *4. The petitioner has further alleged that from 10.12.1998 to January 2000 he was paid @ Rs. 96/- per day and was required to sign on the receipt, similarly from Feb.2000 to May 2000 he was paid @ Rs.600/- per month, from June 2000 to August 2001 @ Rs.800/- per month and when he raised objection, he was asked to accept whatever is being paid and the remaining salary will be paid @ Rs.96/- per day but when the*

petitioner raised demand again and again his services were terminated on 01.09.2001 and the remaining salary of Rs.41,088/- was not paid till date. The workman had asserted that he moved under Section 33 C(2) before U.P. Labour Cour on 9.5.2002. Case has been registered as Misc. Case No.70 of 2002 and is still pending. Conciliation proceeding before the RLC have failed, the matter has been referred to Ministry and the Ministry sent the matter to this Tribunal.

5. The petitioner has submitted details of the log book and duty performed by him w.e.f. 10.12.1998 to 31.8.2001 having worked for more than 240 days. Details have been given in several sub paras of Para 9 of the claim statement.

6. The workman has asserted that he had worked for more than 240 days in the period in question and the opposite party has intentionally not followed the ID Act provisions, unfair trade practice has been adopted and his legal right has been infringed. With the aforesaid pleadings request has been made by the petitioner to declare the impugned order as illegal and to reinstate him with continuity in service.

7. The management has filed written statement M-18 wherein allegations levelled in the claim statement have been denied. Opposite party has asserted that the said OFC Division is not permanent establishment of the BSNL, it was created for the completion of certain projects, applicant was neither appointed nor engaged in on temporary or permanent status, no appointment letter was ever issued by the competent authority in favour of workman. Telecom Policy 1999 and consequential developments have been mentioned in the written statement. The opposite party has asserted that there is no sanctioned post of Driver in OFC Division and the applicant was never appointed nor engaged by any competent authority either on regular or temporary basis. Misleading and misconceived facts have been given by the workman in the claim statement.

8. The opposite party has stressed that Sri H.L. Maurya, JTO was neither appointing authority nor he was competent to terminate the regular employee, he could not accord any temporary or permanent sanction to keep the causal labour. Pendency of case under Section 33 C (2) of I.D. Act has been admitted by the opposite party. The management has submitted that if the applicant was appointed or engaged by some contractor then any competent authority does not have any liability to regularize his service particularly when there was no regular sanction post of the Driver in the project. Hon'ble Supreme Court and Hon'ble High Court Judgments have been referred without any specific citation by the opposite party. The management has requested to dismiss the petition with cost in favour of the management.

9. With strong denial of the main facts raised by the opposite party in its written statement, rejoinder W-18 has been filed by the workman, reiterating the pleas taken the claim statement.

10. The management has further filed additional written statement M-21 and has mentioned therein citation of 2003 (1) LBSR 415 Hon'ble Supreme Court submitting thereby that the proof of working days is on employee in the event of any denial of said factum. The management has further mentioned that UP 32 T 9782 has been idle since log and no other vehicle was ever engaged/provided against the condemned vehicle UP 32 T 9782. The workman further rebutted additional written statement with its supplementary W-23. The application C-25 for summoning the documents was moved by the workman. This application was disposed by the then Hon'ble Presiding Officer vide order dated 25.5.2005.

11. The workman submitted his evidence through affidavit. He was thoroughly cross examined on behalf of the management. The workman further adduced his witnesses, Sri Sarvajeet Upadhaya, Sri Bhubneshwar Tewari, Sadar Saraj Jit Singh in evidence.

12. The management filed affidavit of Sri H.L. Rai and Sri Tribhuan Dutt in its evidence. Sri Tribhuan Datt was cross examined on behalf of the workman. Subsequently on the application of management, its witnesses Sri H.L. Rai was permitted in the court for his cross examination on behalf of the workman. On 6.9.2013 further cross examination of Sri H.L. Rai was deferred but could not be concluded."

"*20. It may be quite pertinent to mention here that in the application M-83 dated 24.4.2015 request has been made by the learned AR for the management to grant time so as to verify the authenticity of the disputed documents with some competent authority. Sufficient time was granted but no such verification was made by any official of the management, neither any written request was submitted by the management. Another application was also moved by the management on 30.7.2015 which was allowed. More than 11 dates were given but the management could not verify the correctness of the documents referred by the workman.*

21. Learned AR for the workman has argued that from Dec.1999 to Nov. 2000 and from January 2000 to Dec.2000 he worked for 280 days and 270 days respectively as per log book. Duties performed by the workman have been corroborated by the witness adduced before this Court. No doubt, the management has also produced its witness before this court but their evidence is cryptic, vague and evasive. Although learned AR for the opposite party has taken sincere pains but the concerned officers of the management have

miserably failed to discharge their duties. They could not muster courage to specifically deny the truthfulness or authenticity of the documents, relied upon by the petitioner. It is also an important fact to mention that none has appeared in the Court to submit arguments on behalf of the management, although affidavits in evidence have been filed earlier and witness have been cross examined also.

22. With regard to the matter in issue, in the present case, principle propounded by Hon'ble Supreme Court in the following Rulings are quite pertinent.

1. (2002)3 SCC R.F.O. Vs. S.T. Hadimani Page 25.

2. (2005) 8 SCC Surendra Nagar District Panchayat Vs. Jetha Bhai Pitambarbhai Page 450

3. (2006)1 SCC R.M.Yellati Vs. Executive Engineer, Page 106

4. (2010) 1 SCC (L&S) Jagbir Singh Vs. Harayana State Agriculture Board Page 545

23. After having heard Learned AR for the workman, scrutiny of the evidence adduced by both the parties in the light of the documents submitted before this Court, it is inferred that the alleged oral termination order of the workman Sri Manjit Singh w.e.f. 01.09.2001 cannot be adjudicated as legal and justified. The petitioner workman is entitled for reinstatement w.e.f. 01.09.2001 along with 50% of the back wages. The management is directed to ensure payment of the dues to the petitioner within 10 weeks from the date of publication of award failing which interest @ 6% per annum shall also be paid to the petitioner by the management.

24. Award as above."

The respondnet/BSNL challenged the above award dated 16.5.2017 passed by this Tribunal by way of filing a Writ Petition having (Writ-C No.23459 of 2018 Bharat Sanchar Nigam Limited Versus Central Govt. Industrial Tribunal cum Labour Court Lucknow & others) before the Hon'ble High Court, Lucknow Bench, Lucknow.

By means of judgment and order dated 5.1.2023 the Hon'ble High Court allowed the aforesaid writ petition. The relevant portion of judgment dated 5.1.2023 is quoted below:-

"*23. From perusal of the aforesaid judgement it emerges that the Apex Court has categorically held that where there is a short working of the workman (in the case of Satish Kantilal Amreila the working was 2 and 1/2 years) then the law laid down by the Apex Court in the case of Bhurumal (supra) would be applicable i.e. in case of short working, order of reinstatement and the back wages would not be automatic instead workman should be given monetary compensation to meet the ends of justice.*

24. Here the Court may hasten to add that the learned Senior Advocate for the respondents has placed reliance on the judgement of the Apex Court in the case of Rajkumar (supra) which was passed considering the earlier judgement of the Apex Court in the case of Bhurumal (supra) to argue that as juniors to the workman have been regularised in services as such there is no error in the learned Tribunal having directed for reinstatement of the workman.

25. The said argument of learned Senior Advocate is attractive on the face of it but what the Court finds is that learned Tribunal while directing for reinstatement of the workman has not considered that the alleged juniors of the workman have been regularised in service or retained in the service rather the learned Tribunal, upon finding the alleged termination to be illegal, has directed for automatic reinstatement of the workman. Even if considering the alleged working of the workman, as per his case before the learned Tribunal of he having worked continuously from 10.02.1998 to August 2001 the same would amount to alleged working of 2 years and 8 months and consequently the law laid down in the case of Satish Kantilal Amrelia (supra) would be squarely applicable in as much as there would not be automatic reinstatement on the short working of the workman. Thus this ground taken by the petitioners also finds favour with the Court.

26. As regards the third ground taken by the petitioners for challenging the award of the learned Tribunal that there has been no continuous service of the workman prior to his alleged termination, the Court would now consider the judgment of Hon'ble the Apex Court in the case of Siri Niwas (supra) over which reliance has been placed by the learned counsel for the petitioners. In the case of Siri Niwas (supra) the Apex Court has held as under:

> *"For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to*

whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case."

27. From a perusal of the judgement of Siri Niwas (supra) it emerges that Hon'ble the Apex Court while considering the definition of the words "continuous service" has considered Section 25B of the Act 1947 and has held that in terms of sub Section (2) of Section 25B of the Act 1947 if a workman, during a period of 12 actual months preceding the date with regard to which calculation is given, has actually worked under the employer for 240 days then he will be deemed to be in continuous service for a period of one year.

28. In this case the alleged termination of the workman took place on 01.09.2001 while his working has been considered by the learned Tribunal (as corrected on 10.09.2018) from December 1999 to December 2000 meaning thereby that the services upto 31.08.2001 have not been considered by the learned Tribunal for calculating the continuous service of the workman. Thus once the alleged continuous service of the workman right upto 31.08.2001 has not been considered by the learned Tribunal consequently it cannot be said that the petitioners have violated the provisions of the Act 1947. Thus this ground also finds favour of the Court.

29. Keeping in view the aforesaid discussion, the writ petition is allowed. The impugned award dated 16.05.2017 published on 03.04.2018, a copy of which is annexure 1 to the petition, is set aside. The matter is remitted to the learned Tribunal to pass a fresh order on merits. As the matter is pending since long as such let an order be passed within a period of six months from the date of receipt of certified copy of this order after hearing all the parties concerned."

In the above said background the matter came up for consideration before this Tribunal by means of application moved on behalf of respondent-BSNL on 10.3.2023 and a notice was issued to the workman to present before this Tribunal. Thereafter on 7.7.2023 on behalf of claimant the appearance was put up through Counsel. Thereafter the matter was heard.

After hearing the Learned Counsel for the parties and going through the record and taking into consideration earlier order passed in the present case by this Tribunal & Hon'ble High Court as well as material documents available on record, the position which emerges out that in response to a letter written by the workman Sri Manjeet Singh under ATI Act, a letter dated 6.12.2006 was written by the General Manager (Admin) & PIO mentioning as under:-

कृपया आपके द्वारा ए0सी0जी0–67 रसीद सं0 54 बुक संख्या 1239 दिनांक 1.12.2006 को रु0 144/– आर0टी0आई0 एक्ट 2005 के अर्न्तगत 72 पेपरों की छाया प्रतिलिपियॉ प्राप्त करने हेतु जमा किये गये हैं।

कृपया 72 पेपरों की छाया प्रतिलिपियॉ प्राप्त करें।

Thereafter, formalities as mentioned therein, completed by the workman and respondent issued another letter dated 20.1.2007, quoted below:-

"कृपया उपरोक्त विषयक पत्र दिनांक 04.01.2007 के सन्दर्भ में आप द्वारा भुगतान धनराशि रु0 84/– मात्र की मूल प्रति रसीद इस कार्यालय में प्राप्त हो गई हैं।

आप द्वारा वांछित गेट पासों की सत्यापित प्रतियॉ जो कुल 42 पृष्ठों में है आपको प्रेषित की जा रही है।"

In addition to above said facts the workman/applicant appeared as witnesses in order to prove his case. Relevant portion of which/cross-extermination is quoted below:-

"प्र0 क्या आपके किसी सक्षम अधिकारी द्वारा बैध नियुक्ति पत्र दिया गया था?

उ0 नियुक्ति पत्र नही दिया था।

प्र0 आपने जो सभी प्रपत्र प्रस्तुत किये है उनसे यह साबित नहीं होता है कि आपने लगातार 240 दिन काम किया है।

उ0 आप गलत कहते हैं।

प्र0 आपको नियमानुसार नियुक्त किया गया था?

उ0 जी हॉ।

मैने काम करने हेतु कोई आवेदन नहीं दिया था। मेरा नाम मउचसवलउमदज मगबींदहम से नही भेजा गया। किसी अखबार में यह सूचना नहीं निकली थी कि ड्राइवर की भर्ती होनी है। मुझे मालूम है कि सरकारी जगहों पर नियुक्तियॉ होने पर विज्ञापन प्रकाशित होता है और आवेदन पत्र मॉगे जाते हैं। मैनें दो जगह अप्लाई भी किया था। टेस्ट हुआ था। दोनों जगह हमें सफलता नहीं मिली।

प्र0 आपने जो लॉग बुक से सम्बन्धित समस्त प्रपत्र प्रस्तुत किये है वे सभी फर्जी तथा गलत है।

उ0 यह कहना गलत है।"

On behalf of Management Sri Tribhuwan Dutt, SDO working with the BSNL had filed his evidence on affidavit and in his cross examination on 30.5.2007 he stated as under:-

"7.कागज सं0 13/258 पर मेरी हस्तलिपि है और मेरे हस्ताक्षर हैं। 13/259, 13/261, 13/262, 13/263, 13/264 लगायत 13/266, 13/268 लगायत 13/274, 13/276, 13/278 ए व 13, 13/279 लगायत 13/280 पर मेरे हस्ताक्षर एवं मेरी हस्तलिपि है। ये सभी गेट पास है।"

Sri H.L. Rai, SDO who was posted with BSNL filed his evidence on affidavit dated 17.10.2013 and in his cross examination he has stated as under:-

"प्रश्न : पेपर न0 57/7 से लेकर 57/76 लॉग बुक की फोटो है। पेपर न0 57/70 आपको द्वारा भरा गया है। इस पर आपके हस्ताक्षर हैं।

उत्तर : यह फोटो स्टेट है अतः मैं इसके बारें में कुछ नही बता सकता। उपरोक्त अभिलेखों पर

प्रश्न : एस0डी0ई0 (ए0एच0क्यू0 स्टोर) द्वारा सत्यापित हैं। क्या आप इससे बता सकते हैं।

उत्तर : फोटो स्टेट प्रतियॉ है अतः मैं नहीं बता सकता।"

Further, documents which were supplied by the respondents under the RTI Act by the General Manager (Administration)/PIO by means of letter dated 06.12.2006, to the workman, annexed as Paper no.57/76 (the photocopy of log book maintained by the department) in which the dates on which the workman worked, were mentioned, and each every page of the said document there was stamp of SDE(AHQ Store), O/o DGM, Telephone Exchange Building, Gomti Nagar, Lucknow, signed by the said authority.

Moreover, the said documents/photocopy, issued by the competent authority of the respondent/BSNL under RTI Act, during the course of cross examination Sri H.L. Rai who, appeared as witness on behalf of the respondent not disputed the same that they are incorrect or wrong, which is evident from his cross examination as stated hereinabove.

Further, I carefully scrutinized the said documents no.57/7 to 57/76 and from the documents i.e. 57/56 to 76 i.e. photocopies of log book for the period 1.8.2000 to 31.8.2001, in which the period of working of the workman, duly signed by the authority was mentioned, after taking into consideration the dates on which the workman, worked for the period 1.8.2000 to 31.8.2001, it clearly bornes out that the workman worked for more than 240 days in the last preceding calendar months prior to the date of his retrenchment i.e. 1.9.2001.

Thus, from the material available on record it is clearly established that service of the workman had been retrenched w.e.f. 1.9.2001 without following the provisions of Section 25-F of Industrial Disputes Act.

Accordingly the core question to be considered that what relief workman is entitled?

In this regard the Hon'ble Madhya Pradesh High Court in its judgment and order dated 04.04.2024 passed in the case of ***Chief Medical & Health Officer Versus Umrao Singh reported in 2024 (182) FLR 882*** has held as under:-

"4. *Considered the submissions made by counsel for parties.*

5. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-

> *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."*

6. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

7. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

> *"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement:(BSNL case, SCC pp. 187-88, paras 29-30)*
>
> *"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.*
>
> *30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)*
>
> > *'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.*
> >
> > *3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v.Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp. 330 & 335, paras 7 & 14)*
> >
> > *"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure.Compensation instead of reinstatement has been held to meet the ends of justice.*
>
> *14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."*
>
> *21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."*

8. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

> *"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer- employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether*

different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community,

(2) social justice for workers, consumers and the people, and

(3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

9. The Supreme Court in the case of Ghaziabad Development Authority Vs. Ashok Kumar, reported in (2008) 4 SCC 261 has held that statutory authorities are obligated to make recruitments only upon compliance of Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void and, under these circumstances, it was held at Workman is entitled for compensation in lieu of reinstatement.

10. The Supreme Court in the case of Mahboob Deepak Vs. Nagar Panchayat, reported in (2008) 1 SCC 575, has held that merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized. At the most, interest of justice will be subserved if payment of sum of Rs.50,000/- by way of damages is made to the Workman.

11. Similar law has been laid down by the Supreme Court in the case of Uttar Pradesh State Electricity Board Vs. Laxmi Kant Gupta, reported in 2009(16) SCC 562, Senior Superintendent Telegraph Vs. Santosh Kumar Seal, reported in 2010(6) SCC 773, Assistant Engineer Rajasthan Development Vs. Gitam Singh, reported in 2013(5) SCC 136."

Accordingly in view of the facts of the present case as well as law referred hereinabove it is clear that retrenchment/termination of service of workman is in contravention to the provisions of Section 25-F of the Act. Thus he is entitled for compensation and not for reinstatement. Further in the present case the workman Sri Manjeet Singh was appointed as casual employee on 10.12.1998 and his services were retrenched on 1.9.2001 thus he worked for about 02 years & 09 months. So taking into consideration the facts of the case the workman is not entitled for reinstatement in services rather it will be appropriate to award a compensation of sum of Rs. 2,00,000/- (Rupees two lacs only) to the workman/applicant against the respondent.

AWARD

For the foregoing reasons the workman/applicant is entitled for compensation of sum of Rs. 2,00,000/- (Rupees two lacs only) and the same should have been paid to the applicant within a period of three months by the respondents. Further the workman is not entitled for reinstatement in services.

Award as above.

Lucknow.

29th October, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2195.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ (यूपी),**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री कपिल देव राम,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ

संख्या 14 of 2012) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-42011/68/2011-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2195.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14 of 2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd.,Sarojini Nagar, Lucknow (UP),and Shri Kapil Dev Ram, Worker,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-42011/68/2011-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 14/2012

Ref. No. L-42011/68/2011-IR(DU) dated: 29.12.2011

BETWEEN

Shri Kapil Dev Ram, H.No. E-262, LDA Colony, Hind Naghar

Kanpur Road, Lucknow.

AND

The Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow (UP).

AWARD

On 29.12.2011 appropriate government by order no.L-42011/68/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 14/2012 (Madhusudan Misra vs. M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri Kapil Dev Ram Grade 'C' (Service No. 46178) dated 03.12.1993 and voluntarily retiring him w.e.f. 11.01.1994 without giving retirement benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.03.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 05.12.1977 being fully eligible for the post and his Service No. is 4617 and he was initially granted Grade 'C'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.03.1994 under the voluntary retirement scheme dated 08.12.1988.

d) A circular dated 06.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 08.12.1988 will remain suspended with effect from 01.12.1993.

e) The applicant immediately on 03.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 30.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 07.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 13.09.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadings of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within

reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000 (84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) That it is pertinent to mention here that earlier the applicant had preferred a Writ Petition No. 1744 (S/S) of 2000 Kapil Dev Ram & oithers vs. Scooters India Limited & others before the Hon'ble High Court, Lucknow Bench, Lucknow, dismissed as withdrawn vide judgment and order dated 08.02.20060, as such, it is clear that the present case is not maintainable in the eyes of law.

j) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 09.01.1997.

k) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 along with interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

l) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limited & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

m) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

n) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have gone through the pleadings made by the parties and evidence available on record.

It is not in dispute between the parties that Sri Kapil Dev Ram-applicant/workman was appointed as semi-skilled worker in establishment known as Scooter India Limited on 05.12.1977, Grade-C having service No. 4617. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 30.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

"*Sub: Voluntary Retirement Scheme – suspension thereof*

The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993."

So a letter/representation dated 03.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 03.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, other similarly situated employees filed a Writ Petition no. 1129 (SS) of 1995 (Samsuddin & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 1129 (SS) of 1995, the relevant portion, quoted below:-

"*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*

In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.

In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No. 53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr. Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow

15th July, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2196.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ (यूपी),**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री के. पांडे,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **35/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-42011/89/2011-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2196.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd.,Sarojini Nagar, Lucknow (UP),and Shri K. Pandey, Worker,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-42011/89/2011-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 35/2012

Ref. No. L-42011/89/2011-IR(DU) dated: 25.01.2012

BETWEEN

Sri K. Pandey, Hanumanpuri, Gali No. 4, Amausi Road

Sarojini Nagar Lucknow (UP)

AND

Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 25.1.2012 appropriate government by order no.L-42011/89/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 35 of 2012 (K. Pandey Versus M/s. Scooter India Ltd.) was registered:-

*"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application dated 15/12 / 1993 of workman Shri K. Pandey, Grade 'D' (Service No. 2491) for withdrawal of notice forVRS*omega voluntarily retiring him w.e.f. 01/01/1994without paying entire pentionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 21.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 16.10.1975 being fully eligible for the post and his Service No. is 02493 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 26.11.1993 applied for his voluntary retirement with effect from 31.3.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 15.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 26.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 26.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 26.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 26.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 26.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 26.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 15.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 05.9.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadings of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 1635 (SS) of 1999 along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) Number of Review Petitions were also filed by the aggrieved persons, which have also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.05.2008. Thus, it is clear that the matter has already been adjudicated upon by the competent Court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow

challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Jitendra Kumar-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 16.10.1975, Grade-D having service No. 02493. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 26.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 26.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

"*Sub: Voluntary Retirement Scheme – suspension thereof*

The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993."

So a letter/representation dated 15.12.1993, submitted by applicant for withdrawal/rejection of his application dated 26.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 15.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 1635 (SS) of 2000 (Munnal Lal & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 1635 (SS) of 2000, the relevant portion, quoted below:-

"*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*

In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.

In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been

provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by

the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be

looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow

21st June,

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2197.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंधक, नवोदय विद्यालय औद्योगिक क्षेत्र, जालोन, उत्तर प्रदेश; क्षेत्रीय प्रबंधक, नवोदय विद्यालय समिति, क्षेत्रीय कार्यालय, विकास नगर, लखनऊ; प्रबंधक, नवोदय विद्यालय समिति, नोएडा, गौतम बुद्ध नगर (यू.पी.),** के प्रबंधतंत्र के

संबद्ध नियोजकों और **सचिव, लोक मजदूर सभा, राजाजीपुरम, लखनऊ,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **51/2015**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-42011/48/2015-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2197.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2015) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Manager, Navodaya Vidyalaya Industrial Area, Jalon, Uttar Pradesh ; The Regional Manager, Navodaya Vidyalaya Samiti, Regional Office, Vikas Nagar, Lucknow ; The Manager, Navodaya Vidyalaya Samiti, , Noida, Gautam Buddh Nagar (U.P), and The Secretary, Lok Mazdoor Sabha, Rajajipuram, Lucknow,** which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-42011/48/2015-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 51/2015

Ref. No. L-42011/48/2015-IR(DU) dated: 11.06.2015

BETWEEN

Shri Om Narayana Sahoo, Secretary, Lok Mazdoor Sabha, E-3351, Rajajipuram, Lucknow-226017

AND

1. The Manager, Navodaya Vidyalaya

   Industrial Area, Kalpi Road, Dist-Jalon, Uttar Pradesh - 285001

2. The Regional Manager, Navodaya Vidyalaya Samiti, Regional Office, 3rd Floor, Lekhraj Panna, Sec-3, Vikas Nagar, Lucknow-226022

2. The Manager, Navodaya Vidyalaya Samiti, B-15, Institutational Area, Sector -62, Noida, Gautam Buddh Nagar (UP) - 201309

AWARD

By order No. L-42011/48/2015-IR(DU) dated: 11.06.2015 the present industrial dispute has been referred for adjudication to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"क्या प्रबंधन, जवाहर नवोदय विद्यालय, उरई, जालौन व अन्य द्वारा श्री राजू उर्फ राजीव कुमार पुत्र श्री विन्धयाचल, चतुर्थ श्रेणी को लगातार कई वर्ष सेवा करने पर सेवा में नियमित न किया जाना न्यायोचित एवं बैध है? यदि नहीं तो कामगार किस राहत को पाने का हकदार है?"*

Accordingly, an industrial dispute No. 51/2015 has been registered on 30.06.2015.

On 18.01.2016, on behalf of claimant, statement of claim filed.

The respondent filed preliminary objections, to which claimant filed its reply.

From the perusal of sheets, it appears that neither workman nor his authorized representative has appeared to press the case on behalf of the claimant since 23.06.2023.

Accordingly, after hearing Sri U.K. Verma, PET (M), authorized representative of the opposite parties and taking into consideration the facts the position which emerges out is that as no oral/documentary evidence has been filed on behalf of the claimant to support his claim, as such, the adjudication case is liable to be dismissed.

Taking into consideration the above said facts as well as the law laid by Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519*** has held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

Thus, taking into consideration the facts on record that in the present case the workman has not filed any oral/documentary evidence in support of his claim, so the same is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow

21st August, 2024.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2198.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर-गोंडा; निदेशक, आईटीआई लिमिटेड, मनकापुर, गोंडा; महाप्रबंधक, उत्पादन, आईटीआई लिमिटेड, मनकापुर; वैयक्तिक प्रबंधक, कार्मिक एवं प्रशासन आईटीआई लिमिटेड, मनकापुर, गोंडा,**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री विनय कुमार सैनी, एवं 17 अन्य,** कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **74/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-221-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2198.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Indian Telephone Industries Ltd., Mankapur -Gonda; The Direcator, I.T.I. Ltd, Mankapur, Gonda ; The**

General Manager, Production, ITI Ltd., Mankapur ; The Personal Manager, Personal & Administration I.T.I. Ltd, Mankapur, Gonda. and Shri Vinay Kumar Saini, and & 17 others Worker, which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-42025/07/2024-221-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 74/2012

BETWEEN

Vinay Kumar Saini S/o Shri Ram Dev Saini

R/o Village & Post Paska, District -Gonda & 17 others

AND

1. Indian Telephone Industries Ltd. Mankapur, District-Gonda.

2. Direcator, I.T.I. Ltd, Mankapur, Gonda.

3. General Manager, Production, ITI Ltd., Mankapur

4. Personal Manager, Personal & Administration I.T.I. Ltd, Mankapur, District Gonda.

AWARD

On 12.09.2012 the claimants/workmen have filed the present industrial dispute as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case & submissions on behalf of workmen:

Indian Telephone Industry Limited, Mankapur, Gonda (hereinafter referred to as Industry), as per the Apprenticeship Act, 1961 engaged/appointed following persons as 'Apprentice"

1. Vinay Kumar Saini
2. Ram Kirpal
3. Kaushal Kumar
4. Mahadeo
5. Shiv Nath
6. Shri Prakash Chaudhary
7. Sukh Ram
8. Ram Das
9. Ram Kishore
10. Avadesh Kumar Srivastava
11. Nitiyanand Pathak
12. Suresh Kumar
13. Kamla Pati Mishra
14. Shiv Dayal
15. Santosh Kumar
16. Kailash Nath Tiwari
17. Suresh Kumar Srivastava

18. Ramapati

In pursuance to said engagement, they have completed apprenticeship training on 23.10.1989. After completion of apprenticeship training above referred workmen were given 'casual appointment' on 18.11.1989 an had also been allotted 'staff number' by the competent authority of the industry. In pursuance to the same they worked and discharged their duties till 31.07.1991 and their services were retrenched.

On behalf of the workmen it is further submitted that aggrieved by the order retrenchment of their service w.e.f. 31.07.1991, for redressal of their grievances approached the Hon'ble High Court by filing a Writ Petition No. 1121 (SS) of 1992 Vinay Kumar Saini & Others v. Indian Telephone Industries, Limited, Mankapur, Gonda & others by order dated 03.08.1999 was disposed, which reads as under:

"This writ petition has been filed by the petitioners challenging the order of discontinuance of the petitioners as daily rated labours. The petitioners were working as daily wages Technicians and Operators in the organisation of the opposite parties.

The petitioners' contention is that they have completed 240 days of service and they are workmen within the meaning U. P. Industrial Disputes Act, 1947. but they have been restrained from working in violation of Section 6 (N) of the U. P. Industrial Disputes Act, 1947. There is nothing on the record to show that the order of retrenchment has been passed in accordance with the provisions of Section 6 (N) of U.P. Industrial Disputes Act. As held by Hon'ble Supreme Court in the judgment reported in 1999(3) SCC page 601, if the order of retrenchment has been passed in violation of the provisions of Section 6(N) of the U. P. Industrial Disputes Act, the order is non est and the relationship of master and servant continues to be there.

In view of the aforesaid legal position the writ petition is allowed. The termination order is set aside. The petitioners shall be allowed to continue in service and the opposite parties are directed to consider the petitioners for regularisation."

Respondent challenged order dated 03.08.1999, passed in Writ Petition No. 1121 (SS) of 1992 Vinay Kumar Saini & Others v. Indian Telephone Industries, Limited, Mankapur, Gonda & others by filing the Special Appeal No. 400 of 1999, ITI, Limited, Mankapur Through G.M. v. Vijay Saini & others, and allowed by order dated 09.10.2010, the operative potion reads as under:

"The impugned order passed by the learned Single Judge dated 03.08.1999 is set aside and the matter is remitted back to the learned Single Judge for re- consideration.

The appellant, herein to file a counter affidavit within two weeks from today. The learned Single Judge is requested, considering that the matter is of the year 1992, to dispose of the writ petition, if possible within three months from today. Needless to say that all questions, which have been raised before us, are left open to the parties to argue before the learned Single Judge.

The appeal is allowed."

Thereafter, matter again came up before the Hon'ble Single Judge (Writ Petition No. 1121 (SS) of 1992 Vinay Kumar Saini & Others v. Indian Telephone Industries, Limited, Mankapur, Gonda & others) and by an order dated 22.02.2012, disposed of, which reads as under:

"The petitioner has challenged the impugned order of termination on the ground that he has worked for more than 240 days in a year but without following the procedure prescribed in Section 6-N of Industrial Disputes Act, 1947, he has been terminated by way of retrenchment and impugned order of termination is illegal.

The Apex Court had repeatedly held that where protection is claimed under Labour Legislation, statutory remedy for redressal of the grievance is available under Labour Legislation and that should be availed first by workmen particularly when this question involve seriously disputed question of fact. In one of its decision in ONGC Ltd. & Anr. Vs. Shyamal Chandra Bhowmik, 2006 (1) SCC 337 the Court has take taken the same view. The Apex Court in its judgment dated 2.5.2008 in Civil Appeal No.3202 of 2008 (State of U.P. & Ors. Vs. U.P. Rajya Khanij Vikas Nigam & ors.) has taken the view that issue relating to retrenchment involve seriously disputed questions of facts and workmen should be relegated to avail remedy before the Forum under Industrial Law and High Court should not have entertained the petition and decide the matter on merits.

In view thereof, I do not find any reason to interfere with the order impugned on the ground of alleged violation of Section 6-N since the a remedy lie under the provisions of Industrial Disputes Act.

Dismissed.

Interim order, if any, stands vacated."

Order dated 22.02.2012, passed in Writ Petition No. 1121 (SS) of 1992 Vinay Kumar Saini & Others v. Indian Telephone Industries, Limited, Mankapur, Gonda & others, challenged by the workman by filing Special Appeal No.

139 of 2012 Vinay Kumar Saini & others v. Indian Telephone Industries Ltd. Mankapur Gonda & ors., in which an order 21.03.2012, quoted herein below:

"Learned counsel for appellant submitted that this special appeal has been preferred being aggrieved from and dis-satisfied with the judgment of learned 114 Single Judge directing appellant to raise dispute before alternative forum namely C. Central Government Industrial Tribunal through Conciliation Officer. Learned punsel contends that after twenty years of litigation in High Court, if appellant is relegated to alternative remedy, it would be a great injustice. It is also a submission of learned counsel that in a judgment of five Judge Bench of Hon'ble the Apex Court, reported in (1992) 3 SCC 336 (Workmen of Meenakshi Mills Ltd. And others vs. Meenakshi Mills Ltd. And another), it has been held as under:

"The remedy of judicial review under Article 226 is, in our view, an adequate protection against arbitrary action in the matter of exercise of power by the appropriate Government or authority under sub-section (2) of Section 25-N of the Act. The third contention is, therefore, rejected."

On the other hand, learned counsel for respondents urged that it is a disputed question of fact and the subject matter would be squarely covered by a latest judgment of Hon'ble the Apex Court reported in (2006) 1 SCC 337 (ONGC Ltd. And another vs. Shyamal Chandra Bhowmik). The relevant portion of the judgment as contained in para 12 thereof would read as under:

"The High Courts should entertain writ petitions directly when claim of service of more than 240 days in a year is raised. Whether a person has worked for more than 240 days or not is a disputed question of fact which is not to be examined by the High Court Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analysed and conclusion can be arrived at. As in the instant case the legal position has not been analysed in the proper perspective, it would be appropriate if the matter is decided by the forum provided under the Act."

In view of the settled position the appellant has been relegated to the alternative forum. Thus we are not inclined to interfere. However, looking to the time spent since the cause of action arose way back in 1991, when the services of the appellant were terminated, it would be expedient in the interest of justice to direct conciliation Officer concerned to complete the proceedings on application being made, upto reference after hearing both the parties within 15 days from the date of receiving a copy of this order along with appropriate application and thereafter upon reference, the Central Government Industrial Tribunal shall dispose of the matter within two months.

Special appeal is, thus, disposed of in terms of aforesaid directions."

Accordingly, it is submitted by learned counsel for workmen that in view of the above said factual background, aggrieved by impugned action of the respondents thereby terminating/retrenching the services of the workmen on 31.07.1991, which is in violation of provisions of section 25 F of the Act, Vijay Kumar Saini & 17 others, whose names are mentioned hereinabove, have filed present industrial dispute before this Tribunal u/s 2A of the Act.

During the pendency of the present ID case on 18/22.10.2012 an application has been moved on behalf of the respondent titled as "Application for deletion of name of opposite party no. 1" which was allowed by this Tribunal; accordingly, now the titled of the case before this Tribunal is ID No. 74/2012 Vinay Kumar Saini & others v. Indian Telephone Industry Limited, Mankapur, Gonda.

Learned counsel for workman further submitted that after the completion of apprenticeship training successfully they were given casual appointment in the Industry from 08.11.1989 to 31.07.1991 and even allotted staff number; however, their services were retrenched w.e.f. 31.07.1991 in pursuance to the order dated 29.07.1991, without following the provisions of section 25 F of the Act.

Accordingly, learned counsel for workman submits that as the impugned action of the respondent (Personnel Administration, ITI, Mankapur, Gonda) thereby terminating/retrenching services of the workmen by order dated 29.07.1991 w.e.f. 31.07.1991 is contrary to law and in violation of section 25 F of the Act, so the same may kindly be set aside and they may be reinstated with full back wages.

Submissions on behalf of respondents:

Sri Adarsh Jagdhari, learned counsel for respondent raised a preliminary objection that as in the present case the services of the workmen has been retrenched/terminated by order dated 29.07.1991 w.e.f. 31.07.1991 and they have filed the present ID case u/s 2A of the Act on 12.09.2012 so the same is liable to be dismissed on the ground of limitation as provided u/s 2A(3) of the Act.

Second objection was taken by Sri Adarsh Jagdhari, learned counsel for respondent is that the workmen cannot filed joint claim in single ID case u/s 2A of the Act as such, the same is not maintainable.

Sri Adarsh Jagdhari, learned counsel for respondent, on merit, has submitted that Sri Vinay Kumar Saini & others were initially as per the advertisement issued by the industry were appointed as apprentice trainee as per Apprentice Act, 1961 and they had completed the Apprenticeship training.

And after completion of apprenticeship training they were given casual appointment uptill 31.07.1991, so, in view of said facts as they are apprenticeship trainee the present ID case, filed by them, is not maintainable before this Tribunal in view of the law as laid down by the Hon'ble Supreme Court in the case of *National Small Industries Corporation Limited v. V. Lakshminarayanan AIR 2007 (1) SC 21*.

Sri Adarsh Jagdhari, learned counsel for respondent further submits that if for argument's sake it is taken for consideration hat they are casual employee in industry then in that circumstances the workmen have not proved that they have worked for 240 days in preceding 12 months from the date of their retrenchment/termination.

Next argument advanced by Sri Adarsh Jagdhari, learned counsel for respondent is that as workmen as per their own case they are casual employee so they are not entitled for regularization of their services as claimed by them and in support of his argument he has placed reliance on following judgments:

(i) Gobinda Chandra Mondal & others vs. Principal, Rabindra Mahavidyalaya & others 2013 (138) FLR 657.

(ii) Mr. Ashok U. Nikam v. Tata Power Company Ltd. 2018 LLR 871.

(iii) Himanshu Kumar Vidyarthi & others vs. State of Bihar & other 1997 (76) FLR 237.

(iv) Locvhan Prtasad vs. Executive Engineer, PWD, Nirman Khand, Bareilly & another 2004 (100) FLR 455.

(v) Rattan Singh vs. Union of India & another 1998 SCC (L&S) 170.

(vi) Devanand vs. State of U.P. & ors. Manu/UP/1112 21006.

Sri Adarsh Jagdhari, learned counsel for respondent also argued that after completion of apprenticeship training and before retrenchment of services on 31.07.19914 the respondent has conducted an exercise for regularization of services of their workmen who have competed apprenticeship training and in some of the workman who have completed apprenticeship training have appeared in the said exercise and they were also called for interview, so, keeping in view the above said facts the present claim petition filed by the workman lacks merit, liable to be dismissed.

Finding & conclusion:

I have heard the learned counsel for parties and gone through the record.

ITI Limited/industry, issued an advertisement for apprenticeship training and in pursuance to said training, the workmen have submitted their candidature. Thereafter, Personnel Officer of industry on behalf competent authority issued a letter dated 12.04.1988 (filed by the respondent, which is on record as document no. 5/c). In pursuance to said letter they were selected and were given one years apprenticeship training as per the Apprenticeship Act, 1961.

After completing the apprenticeship training on 30.10.1989, competent authority issued an order dated 26.04.88, relevant potion of the same in respect to one of the workman viz. Sri Suresh Kumar reads as under:

"संदर्भ वी: ई. एस. एस./एम./रिकूट/ दिनाक: 26.4.88

सेवा में,

Suresh Kumar 3/o-Bri Ram Saran,

Shastri Nagar, Mankspur, GONDA-UP.

विषय :- शिशुक्षु अधिनियम 1961 के अंतर्गत प्रशिक्षार्थियों के संबंध में

प्रिय महोदय,

आपको सहर्ष सूचित किया जाता है कि इस संस्थान में machinish व्यवसाय में उक्त अधिनियम के अंतर्गत प्रशिक्षण हेतु दिनांक: 26.4.88 की आपको द्वारा दी गयी लिखित परीक्षा/साक्षात्कार के फलस्वरूप आपका चयन प्रशिक्षार्थी अप्रेंटिस में एक वर्ष की अवधि के लिए किया गया है। यह चयन आपके स्वास्थ्य परीक्षा में होने पर ही वैध होगा । अतः कृपया आप स्वास्थ्य परीक्षा हेतु संलग्न प्रपत्र पर किसी डाक्टर से जो सहायक सर्जन के समकक्ष हो अथवा ऐसे ही रजिस्टर्ड मेडिकल

प्रेक्टीभ स्वास्थ्य परीक्षा करा के अपने व्यय पर दिनांक: 3.5.88 तक समत्त अभिलेखी अधोहस्ताक्षरकर्ता के कार्यालय में उपस्थित हो।"

Accordingly, the workmen were engaged as casual employees in the industry w.e.f. 08.11.1989; and they were also allotted staff number. While they were working and discharging their duties, as casual employee the respondent, conducted an exercise for considering the persons who have competed apprenticeship training and in pursuance to said exercise certain workmen have submitted their candidature; and also appeared for interview and test which was held by the opposite parties; however, on record there is no material brought by the respondents that what is final outcome of the said exercise done by the respondents.

Thereafter on 29.07.1991, competent authority issued an order thereby directing that the present workmen who are working and discharging their duties as casual employees with the respondent their services shall be retrenched/terminated; in pursuance to said direction their services were retrenched/terminated on 31.07.1991.

Aggrieved by above order of termination, initially the workmen approached the Hon'ble High Court for redressal of grievances in regard to the facts which are stated hereinabove.

In pursuance to the order dated 21.03.2012, passed by the Hon'ble High Court in Special Appeal No. 139 of 2012 Vinay Kumar Saini & others v. Indian Telephone Industries Ltd. Mankapur Gonda & ors. have filed the present ID case u/s 2A of the Act on 08.01.2013.

This Tribunal on an objection taken by the respondent i.e. Indian Telephone Industries Ltd. Mankapur Gonda, passed an order, quoted herein below:

"Case taken. Present A/Rs of the parties.

M-11, preliminary objection filed by the OP No. 2 and W-12 is reply thereto by the workman.

The opposite party has filed the preliminary objection to the effect that instant claim statement has been filed by 18 workmen, which is contrary to the provisions of Section 2A of the I.D. Act, 1947. It has been stated that there is no provision wherein any number of workmen can raise dispute jointly under Section 2A of the Act, therefore, the present statement of claim, filed by Vinay Kumar & 17 others, be rejected as bad in the eye of law, hence, not maintainable.

The workmen in their reply has submitted that from bare perusal of the definition of 'Industrial Dispute' as provided in Section 2 (k) of the Act, it is manifestly clear that workman can raise their dispute jointly and the same is 'industrial dispute', the provision of Section 2 A of the Act does not debar from filing the case by the workmen jointly, therefore, the preliminary objection of the management is liable to be rejected. :

Heard the representatives of the parties at length and perused the objection and its reply.

The provision contained in Section 2A of the Industrial Disputes Act, 1947 is as under:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

A bare perusal of the above provision makes crystal clear that in the matters pertaining to discharge, dismissal, retrenchment or termination of services of an individual workman by the employer shall be deemed to an industrial dispute and such industrial dispute shall be raised by an industrial workman, the words 'notwithstanding that no other workman nor any union of workman is party to the dispute' qualifies the same.

Moreover, in 2012 (135) FLR 227 MCD vs. Pushpa Rani & others Hon'ble Delhi High Court has observed that 'single statement of claim by four workmen against termination of service dismissed as not maintainable.

Therefore, in view of the provisions contained in Section 2A and above referred case law, I am of opinion that for raising an industrial dispute, to challenge the validity of an order regarding discharge, dismissal, retrenchment or termination of services, a workman has to make an application before competent forum individually and the Statutes debars the workmen making single application jointly against alleged discharge, dismissal, retrenchment or termination. Accordingly, the preliminary objection of the management is allowed as above."

Aggrieved by said order, workmen filed a Writ Petition No. 1109 of 2013 Vinay Kumar Saini & others v. Central Govt. Industrial Tribunal/Labour Court & ors. by an order dated 24.04.2013, allowed, operative portion of the same reads as under:

"The petitioners have been litigating this matter since 1992. The provision of Section 10(4-A) of the Act have been introduced in respect of Delhi w.e.f. 22.8.2003. Section 10(4-A) reads as under.

"10(4-A) Notwithstanding anything contained in section 9-C and in this section, in the case of a dispute falling within the scope of Section 2-A, the individual workman concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Delhi Amendment) Act, 2003, whichever is later, apply, in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal as the case may be, shall dispose of such application in the same manner as a dispute referred under sub-section (1)"- Delhi Act 9 of 2003, S.2 (w.e.f. 22.8.2003)."

The aforesaid provision was made the basis of judgment of Delhi High Court, on which, reliance has been placed by opposite party no.1. The opposite party no.l has not taken into consideration the provisions of Section (2-A) of the Act, wherein it has been provided that if any workman or union of workmen is party to the dispute, individual workman can also approach against his order of discharge, dismissal, removal, retrenchment or otherwise termination of service. It appears that the aforesaid provision was made and an amendment was incorporated w.e.f. 11.2.1965 as earlier individual workmen were precluded from Labour Tribunal. By virtue of the aforesaid amendment, the Parliament has taken a decision to give opportunity to the individual workmen so that they may not become bounded labour in the hands of union of workmen. The Labour Tribunal appears to have placed reliance upon the aforesaid judgment without considering the amended Section (2-A) of the Act, which was applicable to the State of U.P. The aforesaid judgment of the Delhi High Court is based upon the amended Section (4-A) of the Act. No such provision exists in respect of State of U.P. The claim of the petitioner has to be considered in the light of Section (2-A) of the Act.

The Supreme Court while considering the identical situation in the case of Balmer Lawrie Workers' Union, Bombay and another vs. Balmer Lawrie and Co. Ltd. And others, 1984 (Supp.) SCC 663, came to the conclusion that the joint claim on behalf of the workmen would be maintainable. In Para-15 of the aforesaid judgment, the apex court observed as under:

"Before the introduction of Section 2-A in the Industrial Disputes Act, 1947 the court leaned in favour of the view that individual dispute cannot be comprehended in the expression 'industrial dispute' as defined in the Industrial Disputes Act, 1947. Any dispute not espoused by the union for the general benefit of all workmen or a sizeable segment of them would not be comprehended in the expression industrial dispute' was the courts' view. Often an invidious situation arose out of this legal conundrum. An individual workman if punished by the employer and if he was not a member of the recognised union, the latter was very reluctant to espouse the cause of such stray workman and the individual workman was without a remedy. Cases came to light where the recognised union by devious means compelled the workmen to be its member before it would espouse their causes. The trade union tyranny was taken note of by the legislature and Section 2-A was introduced in the Industrial Disputes Act, 1947 by which it was made distinctly clear that the discharge, dismissal retrenchment or termination of service of the individual workman would be an industrial dispute notwithstanding that no other workman or any union of workman is a party to the dispute. Section 20, sub-section (2) while conferring exclusive right on the recognised union to represent workmen in any proceeding under the Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted in Section 2- A. This legal position is reiterated in Section 20 (2) (b). Therefore while interpreting Section 20 (2) (b) it must be kept in view that an individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognised union would not expouse his case and he will be able to pursue his remedy under the Industrial Disputes Act. 1947. Once this protection is assured, let us see whether the status to represent workmen conferred on recognised union to the exclusion of any individual workman or one or two workmen and who are not members of the recognised union would deny to such workmen the fundamental freedom guaranteed under Article 19 (1) (a) and 19 (1) (c) of the Constitution."

Case of the petitioners is, therefore, squarely covered by the aforesaid dictum and joint claim raised by the petitioners would be maintainable. Even otherwise also, it is to be noted that if there are separate claims, then time and energy of the Court will also be wasted and pendency will also be multiplied and individual will also be put to harassment while pursuing their case individually, when it can be pursued collectively.

Accordingly, the writ petition is allowed and the order dated 8.1.2013 is quashed and the matter is remitted to the Labour Tribunal, opposite party no. 1, to adjudicate the issue expeditiously in accordance with law."

Thus, in view of above said facts, the preliminary objection taken by Sri Adarsh Jagdhari, learned counsel for respondent that present industrial dispute filed u/s 2A of the Act on 12.09.2012 so the same is liable to be dismissed on the ground of limitation as provided u/s 2A(3) of the Act, has got no force, rejected.

So far as the second preliminary objection taken by Sri Adarsh Jagdhari, learned counsel for respondent that the present ID case filed by the workmen u/s 2A is barred by the period of limitation is concerned the same has also got no force because in Special Appeal No. 139 of 2012 Vinay Kumar Saini & others v. Indian Telephone Industries Ltd. Mankapur Gonda & ors. after hearing the learned counsel for parties the Division Bench of the Hon'ble High Court by order dated 21.03.2012 has directed that the workmen in respect to the grievance in question shall approach the Central Government Industrial Tribunal within two months. Thereafter, in pursuance to said direction the present

industrial dispute has been raised by workmen accordingly the second preliminary objection taken by respondent, in view of above said facts has got no force, and rejected.

Sri Adarsh Jagdhari, learned counsel for respondent has submitted that taking into consideration the definition of 'workman' as given in section 2 's' of the Act, as well as the Section 18 of the Apprenticeship Act, 1961, the present workmen who are apprenticeship trainee cannot be termed to a 'workman' u/s 2 's' of the Act, therefore, the present claim petition filed by them is not maintainable. In support of his argument, he has placed reliance on the judgment given by the Hon'ble Supreme Court in the case of *National Small Industries Corpn. Ltd. vs. V. Lakshminarayanan 2007 (1) SCC 214*.

Thus, the question that falls for consideration is whether the claimants were workmen or not; according to the definition of workman u/s 2(s) of the ID Act? which, read as follows (as on 01.04.1974):-

"(s) "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, but does not include any person employed in the naval, military, or air service of the Crown."

Thereafter, the definition was amended by Amending Act No. 36 of 1956 which came into force from 29th August, 1956 to read as follows:-

(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline)Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(i) *who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature*."

The change brought about by this Amendment was that the persons employed to do "supervisory" and "technical" work were also included in the definition for the first time by this Amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs.500.

The definition of 'workman' was further amended by Amending Act No.46 of 1982 which was brought into force w.e.f. 21.8.1984 and the same reads as under:-

"(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person-

(i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

A bare perusal of the aforementioned provision clearly indicates that a person would come within the purview of the said definition if he : (i) is employed in any industry; and (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work.

In the case of ***H.R. Adyanthaya & others Versus Sandoz India Ltd. reported in (1994) 5 SCC 373***, the Hon'ble Apex Court held as under:-

"10. It is thus obvious from the decision that the contention on behalf of the workman before the Industrial Tribunal as well as before this Court was that the employee was doing either manual or clerical work, and that not only he had no supervisory duties but he was doing his work under the direction of his superiors and, therefore, he was a workman within the meaning of the definition of workman as it stood then. The dispute in question had arisen prior to

6th January, 1956. The definition of 'workman' at the relevant time included only those persons who were employed to do any skilled or unskilled manual or clerical work. Hence the relevant contention on behalf of the workman which was negatived by this Court. An inference from this decision is also possible, viz., that if the employees' work was mainly manual or clerical, he would have, even as the definition stood then, been covered by it."

Hon'ble the Supreme Court in the case of ***C.G. Gupta Versus Glaxo Smith Klin Pharmaceutical Limited reported in (2007) 7 SCC 171*** held as under:-

"23. In the present case, we find that for determining the nature of amendment, the question is whether it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment should be also one which would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective. We find no such clear provision or anything to suggest by necessary implication or intendment either in the amending Act or in the amendment itself. The amendment cannot be said to be one which affects procedure. In so far as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. In this regard we find that entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". It can be seen that the Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1982. Page 2633 However, the amendment itself was not brought into force immediately and in Sub-section (1) of Section 1 of the Amending Act, it was provided that it would come into force on such day as the Central Government may be Notification in the official Gazette, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. Although this Court has held that the amendment would be prospective if it is deemed to have come with effect on a particular day, a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect.

24. Therefore, by the application of the tests mentioned above, it is clear that the definition of workman as amended must, therefore, presumed to be prospective.

25. In this regard we would like to give one further reason as to why the definition of workman as prevailing on the date of dismissal should be taken into account. When the workman is dismissed, it is usually contended (as has been done in the present case) that the relevant conditions precedent for retrenchment under Section 25N having not been followed and that, therefore, the termination is illegal. Section 25Q of the Industrial Disputes Act, 1947 lays down that contravention of the provision of Section 25N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 1000/- or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to the then prevailing provision of law. It is only in respect of a workman who is then within the definition of Section 2(s) of the Act that the employer is required to follow the condition mentioned in Section 25N, failing which, he will commit an offence. If the employee so dismissed, later becomes a person who is a workman within an expanded definition brought about by a subsequent amendment held to be of retrospective nature, the employer will be rendered punishable for an offence under Section 25N and Q as this would amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) of the Constitution.

26. In Burmah Shell's case (supra) it was held as follows:

In this connection, we may take notice of the argument advanced by Mr. Chari on behalf of the Association that, whenever a technical man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the occasions on which the technical knowledge of that person is actually brought into use. The general proposition put forward by him was that, if a technical employee even gives advice or guides other workmen, it must be held that he is doing technical work and not supervisory work. He elaborated this submission by urging that, if we hold the supervisory work done by a technician as not amounting to his being employed to do technical work, the result would be that only those persons would be held to be employed on technical work who actually do manual work themselves. According to him this would result in making the word "technical" redundans in the definition of 'workman' even though it Page 2634 was later introduced to amplify the scope of the definition. We are unable to accept these submissions. The argument that, if we hold that supervisory work done by a technical man is not employment to do technical work, it would result in only manual work being held to be technical work, is not at all conect. There is a clear distinction between technical work and manual work. Similarly there is a distinction between employments which 'are substantially for manual duties, and employments where the principal duties are supervisory or other type, though incidentally involving some manual work. Even though the law in India is different from that in England, the views expressed by Branson, J., in Appeal of Gardner : In re Maschek : In re Tyrrell [1938] 1 All E.R. 20 are helpful, because, there also, the nature of the work had to be examined to see whether it was manual work. As examples of duties different from manual labour, though incidentally involving manual work, he mentioned cases where a worker (a) is mainly occupied in clerical or accounting work, or (b) is mainly occupied in supervising the work of others, or (c) is mainly occupied in managing a business or a department, or (d) is mainly engaged in salesmanship, or (e) if the successful execution of his work depends mainly upon the

display of taste or imagination or the exercise of some special mental or artistic faculty or the application of scientific knowledge as distinguished from manual dexterity. Another helpful illustration given by him of the contrast between the two types of cases was in the following words:

If one finds a man employed because he has the artistic faculties which will enable him to produce something wanted in the shape of a creation of his own, then obviously, although it involves a good deal of manual labour, he is employed in order that the employer may get the benefit of his creative faculty.

The example (e), given above, very appropriately applies to the case of a person employed to do technical work. His work depends upon special mental training or scientific or technical knowledge. If the man is employed because he possesses such faculties and they enable him to produce something as a creation of his own, he will have to be held to be employed on technical work, even though, in carrying out that work, he may have to go through a lot of manual labour. If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."

Hon'ble the Apex Court in the case of ***Chauharya Tripathi & others Versus L.I.C. of India & others reported in 2015 (7) SCC 263***, in Para-7 held as under:-

"7. *Keeping in view the question posed at the beginning, we are obligated to make a survey of the authorities that have been pronounced by this Court specifically pertaining to the Development Officers working in LIC. A three-Judge Bench of this Court in S.K. Verma vs. Mahesh Chandra & Anr.3, adverted to the definition of 'workman' as originally defined under Section 2(s) of the Act and the substantial amendment that was brought in 1956 in respect of the definition of 'workman' and referred to the decision in Workmen vs. Indian Standards Institution4 and dwelled upon the hierarchy of officers working in LIC, the duties performed by such officers and 2 (2008) 11 SCC 319 3 (1983) 4 SCC 214 4 (1975) 2 SCC 847 eventually held thus :*

"A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India. that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in anyway. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of s.2(s) of the Industrial, Disputes Act."

(*See also :* ***Om Carrying Corporation Versus Tilock Narang & others reported in 2016(148) FLR 915 & T.Boby Francis Versus Lucy Varghese & others reported in 2016(149) FLR 866***)

Recently the Bombay High Court in the case of ***M/s. S.K. International & another Versus Ashok Tanaji Tambe & another reported in 2024 (180) FLR 994*** has held as under:-

"17. On the aspect of determination of status of workmen, within the meaning of Section 2(s) of the ID Act, 1947, the legal position is fairly crystalized. Such determination must be based on the appreciation of the nature of the duties performed by the employee. Nomenclature of the post, which the employee holds, is not of decisive significance. The description of the nature of the duties also does not furnish a surer foundation for determination. Use of grandstanding expressions and management jargon to describe otherwise ordinary and normal functions, is not uncommon. It is, therefore, necessary to correctly appreciate the nature of the core duties discharged by a person whose status is questioned.

18. Section 2(s) of the ID Act, 1947 defines the expression workman to mean any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the case of H.R. Adyanthaya and ors. vs. Sandoz (India) Ltd., the Constitution Bench of the Supreme Court enunciated that to be qualified to be workman under Section 2(s), the person must be employed to do the work which falls in any of the specified categories, manual, unskilled, skilled, technical, operational, clerical or supervisory. To put it in other words, it is not enough that a person is not covered by any of the four exceptions to the definition. It is also fairly well settled that the burden is on the person, who asserts the status of the workman under Section 2(s) to establish with reference to the dominant nature of his duties that the work which the said person performs falls within one of the specified categories under Section 2(s) of the Act, 1947.

19. In the case of Burmah Shell Oil Storage and Distribution Company of India Ltd. V/s. The Burmah Shell Management Staff Association and Others the Supreme Court adverted to a situation where an employee is entrusted

to discharge multifarious duties. In such cases, the Supreme Court held, it would be necessary to determine under which classification the employee will fall for the purpose of finding out whether he does not go out of the definition of "workman" under the exceptions. The principle is now well settled that for this purpose, a workman must be held to be employed to do that work which is the work he is required to do, even though he may be incidentally doing other types of work. The Supreme Court referred to its earlier decision in the case of Ananda Bazar Patrika (P) Ltd. Vs. Workmen, where the principle was enunciated as under:

"3. The question whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere act that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. ...."

(emphasis supplied)

20. In the case of Arkal Govind Raj Rao vs. CIBA Geigy and India Ltd. another three-judge Bench of the Supreme Court re-exposited the principle in the following words:

"6. where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. ....."

21. A useful reference in this context can also be made to a decision of the Supreme Court in the case of S.K.Maini V/s. M/s. Carona Sahu Company Ltd. and Anr.10 wherein it was enunciated that when an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in Burmah Shell Oil Storage (supra). In All India Reserve Bank Employees' Assn. V/s. Reserve Bank of India, it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act."

Hon'ble Supreme Court by means of judgment dated 2.4.2004 passed in the case of ***M/s. Bharat Airtel Limited Versus A.S. Raghavendra passed in Civil Appeal No.5187 of 2023 (2024 INSC 265)*** after taking into consider the definition of 'workman' as given u/s 2 's' of the I.D. Act, 1947; and various judgments on the point in issue, held as under:-

"23. The records also show that the respondent, in fact, performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels. Moreover, after adducing the evidence led by both sides, the Labour Court vide a detailed order and discussion, has held the respondent not to be covered under "workman" as per Section 2(s), ID Act. The learned Single Judge has not appreciated the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in Ved Prakash Gupta (supra). In Paragraph 12 of Ved Prakash Gupta (supra), it was held "...It must also be remembered that the evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported."

24. A bare perusal of the above makes it crystal clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in Ved Prakash Gupta (supra) that the appellant therein was a "workman". At this juncture, we may note that although Ved Prakash Gupta (supra) was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in S K Maini v M/s Carona Sahu Company Limited, (1994) 3 SCC 510, it was held that "…It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. …" The judgment in S K Maini (supra) is innocent of Ved Prakash Gupta (supra), but we do not find any inconsistency in the statement of law laid down in S K Maini (supra), given our reading of Ved Prakash Gupta (supra) as enunciated hereinabove.

25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of "workman" under Section 2(s), ID Act. We cannot be oblivious of the impact of our decisions. In this context, reference to the decision in Shivashakti Sugars Limited v Shree Renuka Sugar Limited, (2017) 7 SCC 729 is apposite:

"43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/ physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on 118 [2024] 4 S.C.R. Digital Supreme Court Reports the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics". In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. 44.We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court [2024] 4 S.C.R. 119 M/S Bharti Airtel Limited v. A.S. Raghavendra needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative."

Hon'ble the Bombay High Court in the case of ***Godrej and Boyce Manufacturing Company Ltd. Vs. Shivkranit Kamgar Sanghatana & others 2024 LLR 492*** held as under:

"10. Before August 29, 1956, the Industrial Disputes Act's definition of "workman" only included skilled and unskilled manual or clerical workers, excluding those in supervisory, technical roles. However, amendments in 1956 and 1982 expanded the definition to include these categories. The Supreme Court judgments in May and Baker (India) Ltd. v. Workmen AIR 1967 SC 678, Western India Match Co. Ltd. v. Workmen 1963:INSC:130 : AIR 1964 SC 472, and Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn. (1970) 3 SCC 378 interpreted the definition in earlier years, focusing on whether the work done by individuals fell within the categories of manual, clerical, supervisory, or technical. These judgments determined the eligibility of individuals as workmen based on the nature of their tasks. Subsequent judgments in S.K. Verma v. Mahesh Chandra (1983) 4 SCC 214] Ved Prakash Gupta v. Delton Cable India (P) Ltd. (1984) 2 SCC 569 and Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. (1985) 3 SCC 371 failed to notice the earlier decisions and adopted a broader interpretation. They held that individuals not fitting the four specified categories could still be considered workmen- however, the judgment in A. Sundarambal v. Govt. of Goa, Daman and Diu (1988) 4 SCC 42 reaffirmed the importance of the earlier precedents, asserting that a person must fall within the defined categories to qualify as a workman. Ultimately, the

legal position is crystallized in the case of H.R. Adyanthaya and Ors. Vs. Sandoz (India) Limited reported in 1994 5 SCC 737 wherein the five Judges' bench of Apex Court held that to be considered a workman under the ID Act, an individual must be employed in manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. It is held that to attract provisions of Section 2(s) of the I.D. Act, the employee must show that he performs any work enumerated in the definition and that he is excluded under the four exceptions as provided in the definition.

11. For the adjudication of the status of a workman, what is required to be seen is an emphasis on the actual work performed by such an employee. In other words, if the nature of duties actually performed predominantly shows that he discharges duties to do the work of any of the categories listed in Section 2(s). He is not covered by exceptions of Section 2(s); it would be decisive of the matter that the employee is a workman, and the designation or salary of the employee would be irrelevant.

12. It is now well settled that the adjudication of the issue as to person working within the meaning of Section 2(s) of the I.D. Act has to be determined with reference to the principle of nature of his duties and functions. The dominant purpose of employees must be taken into consideration, and the gloss of some additional duties must be rejected while determining the status and character of a person. The Tribunal needs to first address itself as to various duties assigned to the employees and then draw a conclusion of law as to whether in the light of duties assigned to him would be whether the employee would be working or not."

Accordingly, in nut shell it can be said that from perusal of definition of 'workman' indicates that a person would come within the purview of Section 2(s) of the I.D. Act if he is employed in an industry and performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Further, the definition also indicates exceptions as to when a person would not be covered in the aforementioned definition. It inter alia states that a person would not be covered under the definition if (i) he is employed in a managerial or administrative capacity or (ii) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Reverting to the facts of present case, from the material on record the position which emerged out that initially an advertisement was issued by the respondent thereby inviting applications for apprenticeship training in the institute and in pursuance to said advertisement the workmen submitted their candidature; thereafter they were selected and given apprenticeship training in the institute which was completed on 23.10.1989. After completion of apprenticeship training, they were given casual appointment in the institute w.e.f. 08.11.1989, which was initially for three months, subsequently which was extended till the date of retrenchment of their services on 31.07.1991 in pursuance to the letter/order dated 29.07.1991, passed by the personnel manager. In view of the said facts, the submission made by Sri Adarsh Jagdhari, learned counsel for respondent that the workmen/claimants do not fall within the definition of 'workman' as given u/s 2 's' of the Act, so as per section 18 of Apprenticeship Act, 1961 the present ID case filed by them is not maintainable has got no force.

Keeping in view the above said facts, the argument advanced by Sri Adarsh Jagdhari, learned counsel for respondent that persons prior to termination of their services on 31.07.1991, exercise for regularisation of persons who completed apprenticeship training was made and some of the employees appeared, so they are not entitled for same because; on record the only document which exist is the letter dated 12.04.1988 issued by the personnel manager, ITI, Mankapur by which the workmen were called for test/interview on 26.04.88 at 10 Hrs at HRD centre for consideration of their candidate for employment in Company's services.

Further, in addition to said fact, there is no other documents have been brought on record that whether present workmen have appeared for interview or who are the persons who appeared in said selection process and were selected. Even the list of selected candidate was not issued on one hand and on the other hand in the written statement filed by the respondent dated 29.08.2013 (M-23) it is stated as under:

"4. That the contents of para 3 of the claim statement of Vinay Kumar Saini & 17 others, are not admitted as stated. In reply it is stated that Kaushal Kumar was engaged as casual employee w.e.f. 17.2.1990, while the other 17 applicants were engaged as casual employee w.e.f. 08.11.1989. It is vehemently denied that his attendance was marked in register of regular employees. The attendance of casual employees including the other casual workmen were separately maintained. The rest of the contents of the para under reply are a matter of record."

Next point to be considered in the present case whether the claimants who were after completion of apprenticeship training successfully have been given casual appointment in the institute by written order as filed by the workers with their rejoinder affidavit (C-31), initially for three months and were also allotted staff number i.e. casual number respectively, for example for one of the workman viz. Vinay Kumar Saini staff number/casual number was C-845 and after three months they were allotted to work and discharge their duties till 31.07.1991 when their services were retrenched in pursuance to order/letter dated 29.07.1991 is entitled for relief, taking in view the provisions as provided u/s 25 F of the Act.

From perusal of record the position which emerged out that in addition to the pleadings which were taken by them in written statement as well in the rejonder affidavit it was categorically pleaded and stated that they have worked and discharged duties as casual employee in the industry from 08.11.1989 to 31.07.1991 and in support of said facts they have filed the attendance register as Annexure no. 44 to the claim petition as well the same was also filed along with their rejoinder affidavit.

Further, on behalf of workmen in order to prove their case the evidence on affidaivnt of the following workers have been filed via. (a) Sukhram (b) Shiv Prakash Chaudhary (c) Vinay Kumar (d) Ram Das (e) Ram Kripal (f) Mahade Prasad (g) Shiv Nath (h) Ram Kishore (I) Awdesh Kumar (j) Sudesh Kumar (k) Kamal Pati Mishra (l) Shiv Dayal (m) Santosh Kumar (n) Kailas Nath (o) Sudesh Kumar. And in their evidence on affidaivnt (examination-in-chief) they have categorically stated that they were engaged as casual employee form 08.11.1989 to 31.07.1991 and worked for 240 days and also been allotted staff number.

In addition to the said facts, during the cross-examination of said persons they have proved documents which were filed by them along with their statement of claim and rejoinder affidavit i.e. attendance register and also stated that they have completed 240 days prior to retrenchment of their services.

Per contra, on behalf of respondent in their written statement it was pleaded as under:

"4. That the contents of para 3 of the claim statement of Vinay Kumar Saini & 17 others, are not admitted as stated. In reply it is stated that Kaushal Kumar was engaged as casual employee w.e.f. 17.2.1990, while the other 17 applicants were engaged as casual employee w.e.f. 08.11.1989."

And in para 6 it was stated as under:

"6. That the contents of para 7 of the claim statement of Vinay Kumar Saini & 17 others, are not admitted as stated being contrary to facts. In reply it is stated the names of all those candidates who were selected by the selection board were called upon and appointed hence question of declaration of the results does not arise. It is pertinent to mention here that bare perusal of the claim statement shows that burden is upon the applicants to prove before the Learned Court whether they had worked for 240 days and whether they had appeared in the interview. As per the various pronouncements of the Apex Court it is clear that the applicants are a victim of ill advice.

It is further pointed out that that the agreement that has been averred to in the para under reply, was alleged to be entered into by the I.T.I. Limited Karamchari Sangh and the I.T.I. Limited. The applicants being daily wage earner are not member of the I.T.I. Karamchari Sangh which is formation of only the permanent workers of I.T.I. Limited Mankapur, as such the said agreement is of no benefit to the applicant.

Moreover, on behalf of respondent in order to prove their case evidence on affidavit of one Sri Amresh Kumar Dewvedi, Assistant Manager (HR), ITI, Mankapur was filed and in his cross-examination the said person has stated as under:

"प्र॰ whether claimants worked from 5.5.88 to 14.10.89 in ITI.

उ॰ Yes, worked as apprentice trainee.

प्र॰ क्या कर्मकार ने 240 दिन कार्य किया

उ॰ NCTVT exam तक time being रखे गये थे।"

At this stage it is also relevant to mention herein that besides above said facts no documentary evidence filed on behalf of the respondents, that the workmen have not worked from 08.11.1989 to 31.07.1991and not completed 240 days in preceding 12 months prior to their retrenchment/termination, which in order to deny the claim raised by the claimant in support of their case. In addition to said facts the respondent has also not filed any material that how many workmen have appeared in the interview conducted by them and who have been selected, even the list of select candidates was not prepared.

As per the clear position of the law, it is responsibility of the respondent to bring the said facts on record in order to dislodge the claim of the workmen as prayed in their claim petition that their services were retrenched/terminated without complying the provisions of section 25 of the Act on 31.07.1991.

Thus, in view of the said facts i.e. taking into the consideration the pleadings, documents and evidence filed by the parties, the conclusion which safely arrive is that the workmen have completed 240 days in the last preceding year prior to their retrenchment/termination of their services, as such the said action is in violation of provisions as contained in section 25 F of the Act.

ow the question arises that what relief the workmen are entitled to?

Answer to said question finds place in the case of ***Hari Nandan Prasad & Another reported in 2013 (139) FLR 125 (SC)*** , wherein the appellants, who was engaged on a daily wage basis, has been terminated from service, the industrial dispute was referred to the Central Government -cum- Industrial Tribunal (CGIT). The proceedings in the CGIT culminated in the termination of appellants being held to be illegal and they were directed to be reinstated and the service being regularized, in terms of a circular issued by the FCI, wherein any temporary worker employed for more than 90 days was entitled to be regularized.

In the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal reported in (2013) 14 SCC 543***, the respondent was engaged as a Mistri on muster roll basis, whose services were terminated. The workman was neither given one month's notice nor one month's salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25- F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the Hon'ble High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

In the case of ***U.P. State Road Transport Corporation vs. Man Singh reported in 2006 (111) FLR 323(SC)***, the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Hon'ble Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Hon'ble Supreme Court held that the interest of justice would be sub-served, if the Corporation was made to pay a sum of Rs. 50,000/- to the workman.

In the case of ***Nand Kumar vs. State of Bihar and others reported in (2014) 5 SCC 300***, the Hon'ble Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1***, where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible.

In the case of ***State of Orissa vs. Mamata Mohanty reported in (2011) 3 SCC 436***, the Hon'ble Supreme Court has held that the appointment made without advertisement was in violation of Article 14 and 16 of the Constitution. Para 35 and 36 of the said judgment is reproduced below as follows:-

"*35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).*

Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from

the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

Further the Madhya Pradesh Hon'ble High Court in the case of ***Branch Manager, Central Bank of India Tilak Chowk Vidisha Versus Pradeep Kumar Sen reported in 2024 (181) FLR 809*** held as under:-

"*22. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-*

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

23. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

24. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")?The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded.This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:(SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

25. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar"employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and (3) reasonable return on the public funds invested in the undertaking.

7. *It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court*." (*see also Range Forest Officer Versus Virjibhai Ranchhodbhai & another reported in 2024 (182) FLR 179)*

Hon'ble Apex Court in the case of ***Gopal Krishnaj Ketkar vs. Mohamed Haji Latif and others, AIR 1968 SC 1413*** has held that, if a party in possession of best evidence, which would throw a light on the issue in controversy withheld the same, Court ought to draw an adverse inference against the party notwithstanding that onus of proof does not lie on him. The party who is in possession of best evidence cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

The Hon'ble Madhya Pradesh High Court in the case of ***Chairman, Institute of Engineers, Jabalpur Versus Kailash Sen reported in 2024(181) FLR 300***, it has been held that it is not in dispute that workman was in employment with respondent since the date of engagement and prior to retrenchment of his services he has continuously worked for 240 days in the last preceding 12 months. The said plea taken by the workman has to be categorically denied and disprove by the respondent who has sufficient documentary evidence to demonstrate that employee has not worked for more than 240 days in a calander year by producing attendance and payment register. If same is not done, it will be presumed that the respondent has failed to dislodge the claim of the workman that he has worked for more than 240 days in last preceding 12 months.

A Division Bench of Hon'ble Telangana High Court in the case of ***S. Srinivas Versus The Union of India & others reported in 2024 LLR 860***, it has been held that it is trite law that a party invoking/relying on certain plea has to make an avberment with details to sustain such a plea and has to adduce material to establish allegations made and the burden is on the party to lead and prove that it is right. (see State of Uttar Pradesh v. Kartar Singh, AIR 1964 SC 1135).

Hon'ble the Apex Court in the case of ***Pradeep v. Manganese Ore (India) Limited & ors. 2022 (3) SCC 68***3 has held that as per section 106 of Indian Evidence Act, the burden lie on a party to prove and establish the plea taken by it.

Accordingly in view of the said facts/law the argument, advanced by the Learned Counsel for the respondent Sri Adarsh Jagdhari that workmen are not an employee of the Industry and they did not produce any cogent evidence before this Tribunal in order to prove that they were employee of the Industry rather their engagement was for fixed term; and accordingly their engagement automatically stands finished with the expiry of fixed term, so, the plea which

is taken on behalf of workmen that their services were retrenched by the respondent is totally illegal has got no force because, the workmen have clearly established and proved that they have worked for more than 240 days in the last preceding 12 months prior to date of his oral termination on 31.07.1991; hence, the same is rejected.

Thus in view of above once action on the part of respondent thereby retrenching the services of the workman without following the provisions of Section 25-F of the Act 1952 is contrary to law, then what relief the workman is entitled?

Answer to the said question finds place in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal reported in (2013) 14 SCC 543***, the respondent was engaged as a Mistri on muster roll basis, whose services were terminated. The workman was neither given one month's notice nor one month's salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25- F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the Hon'ble High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

In the case of ***U.P. State Road Transport Corporation vs. Man Singh reported in 2006 (111) FLR 323(SC)***, the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Hon'ble Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Hon'ble Supreme Court held that the interest of justice would be sub-served, if the Corporation was made to pay a sum of Rs. 50,000/- to the workman.

In the case of ***Nand Kumar vs. State of Bihar and others reported in (2014) 5 SCC 300***, the Hon'ble Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1***, where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible. (see also *State of Orissa vs. Mamata Mohanty reported in (2011) 3 SCC 436)*

Further the Madhya Pradesh Hon'ble High Court in the case of ***Branch Manager, Central Bank of India Tilak Chowk Vidisha Versus Pradeep Kumar Sen reported in 2024 (181) FLR 809*** held as under:-

"*22. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-*

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

23. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

24. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")?The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded.This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:(SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

25. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar"employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and (3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

A division Bench of Hon'ble Gujarat High Court in the case of ***Range Forest Officer Versus Virjibhai Ranchhodbhai & another*** reported in 2024 (182) FLR 179 has held as under:-

6.1. The shift in law on this count was highlighted by the Supreme Court in Bhopal Vs. Santosh Kumar Seal [(2010) 6 SCC 773] relying on its own another decision in Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], observing that the relief of payment of lump-sum compensation could be a proper relief in a given set of facts and circumstances.

"In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [2006 (1) SCC 479], Uttaranchal Forest Development Corpn. v. M.C. Joshi [2007 (9) SCC 353], State of M.P. v. Lalit Kumar Verma [2007 (1) SCC 575], M.P. Admn. v. Tribhuban [2007 (9) SCC 748], Sita Ram v. Moti Lal Nehru Farmers Training Institute [2008 (5) SCC 75], Jaipur Development Authority v. Ramsahai [2006 (11) SCC 684], GDA v. Ashok Kumar [2008 (4) SCC 261] and Mahboob Deepak v. Nagar Panchayat, Gajraula [2008 (1) SCC 575].)"

6.2. In subsequent decision in Rajasthan Development Corporation Vs.Gitam Singh [(2013) 5 SCC 136], the Supreme Court stated,

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

6.3. In Uttaranchal Forest Development Corporation Vs. M.C.Joshi [(2007) 9 SCC 353], the Supreme Court held that the question of grant of compensation in place of relief of reinstatement could be guided by relevant factors to be that whether the appointment was made in accordance with the statutory Rules or not.

6.4. It is to be observed that the decisions of the Supreme Court have carved out the circumstances and aspects which may guide the discretion of the court in awarding lump-sum compensation instead of granting relief of reinstatement even if there is a breach of Section 25F, 25G and 25H of the Industrial Disputes Act.

6.5. These factors were highlighted in Bantva Municipality Vs. Amritlal Harji Chauhan being Special Civil Application No.9135 of 2013 decided on 31.3.2014 as under :-

"(i) The fact that the workman is daily-rated workmen, not permanently employed; (ii) He is not holding a permanent post; (iii) Nature of his employment; (iv) Span of service, viz. The period during which he worked upto the date of termination of services; (v) Manner and method of appointment. Whether it was a backdoor entry; (vi) The time gap from the date of termination; (vii) Delay in raising the Reference is also considered to be a germane factor;(viii) Any special feature peculiar to the facts of the particular case.

For instance, in Bhurumal (supra), the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology."

6.6. In the case of BSNL v. Bhurumal, reported in (2014) 7 SCC 177, it was categorically observed that even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself."

During pendency of present industrial dispute, two workmen viz. Kaushal Kumar and Nitiyanand Pathak died, as such, they were substituted by their legal heirs as under:

S. No.	Workman	Legal Heirs
1.	Kaushal Kumar (deceased)	1. Vimla Devi, wife 2. Ravi, son 3. Sandeep, son 4. Ranjan, son
2.	Nitiyanand Pathak (deceased)	1. Puspa Pathak, wife 2. Gyan Prakash, son 3. Laxmi, daughter 4. Shashi, daughter 5. Swati, daughter

Thus it is clearly established by the parties that claimant/workmen viz. Vinay Kumar Saini & 17 others were engaged in the ITI, Mankapur, Godna as casual labourers and their services were retrenched on 31.07.1989. As such as per law which are referred hereinabove the workmen, Sri Vinay Kumar Saini & 15 others and legal heirs of two workmen (decease) are entitled for compensation as their service were retrenched without complying the provisions of Section 25-F of Industrial Disputes Act 1947 but they are not entitled for reinstatement as prayed by them.

AWARD

6. For the foregoing reasons as the services of Sri Vinay Kumar Saini & 17 others, who were engaged as casual labour on 08.11.1989 and their services were retrenched w.e.f. 31.07.1991, without following the provisions of Section 25-F of Industrial Disputes Act 1947, hence, each of the workmen i.e. Sri Vinay Kumar Saini & 15 others viz. Vinay Kumar Saini, Ram Kirpal, Mahadeo, Shiv Nath, Shri Prakash Chaudhary, Sukh Ram, Ram Das, Ram Kishore, Avadesh Kumar Srivastava, Suresh Kumar, Kamla Pati Mishra, Shiv Dayal, Santosh Kumar, Kailash Nath Tiwari, Suresh Kumar Srivastava and Ramapati; and legal heirs of two workmen (decease) viz. Kaushal Kumar (their legal heirs viz. Vimla Devi, wife, Ravi, son, Sandeep, son and Ranjan, son) and Nityanand Pathak (their legal heirs viz. Puspa Pathak, wife, Gyan Prakash, son, Laxmi, daughter, Shashi, daughter and Swati, daughter) are entitled for compensation amounting to Rupees one lakh only; but not for reinstatement in services.

Lucknow)

08th October, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2024

का.आ. 2199.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **निदेशक, केंद्रीय प्लास्टिक इंजीनियरिंग एवं प्रौद्योगिकी संस्थान मुख्यालय - गिंड, चेन्नई; उप निदेशक/प्रबंधक, केंद्रीय प्लास्टिक इंजीनियरिंग एवं प्रौद्योगिकी संस्थान, अमौसी औद्योगिक क्षेत्र, लखनऊ,**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अनिल कुमार गौतम, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **84 of 2021**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.12.2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-220-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd December, 2024

S.O. 2199.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84 of 2021) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, Central Institute of Plastic Engineering & Technology Head Office –Guind, Chennai ; The Deputy Director/Manager, Central Institute of Plastic Engineering & Technology, Amausi Industrial Area,**

Lucknow, and Shri Anil Kumar Gautam, Worker, which was received along with soft copy of the award by the Central Government on 02.12.2024.

[No. L-42025/07/2024-220-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.84 of 2021

Reference No.K-10/1-11/2021-IR dated 11.8.2021

Anil Kumar Gautam, S/o Sri Satya Narayan Gautam

R/o Rustam Vihar Colony, Near CIPET Nadarganj, Lucknow

… …….Workman

Versus

1. Director, Central Institute of Plastic Engineering & Technology

   Head Office –Guind, Chennai-600032;

2. Deputy Director/Manager, Central Institute of Plastic Engineering & Technology, B-27, Amausi Industrial Area, Lucknow-226008

\- ---Respondents

JUDGEMENT

By means of order no. K-10/1-11/2021-IR dated 11.08.2021, the Central Government considered it desirable to refer the dispute for adjudication to the following effect:-

> "*Whether the action of management of Central Institute of Petrochemical Engineering & Technology, Lucknow in terminating the services of Shri Anil Kumar Gautam, S/o Shri Satya Narayan Gautam, Helper w.e.f. 12.9.2019 without following the provisions of Section 25 F of I.D. Act, 1947 is legal and justified? If not, to what relief the workman is entitled to and from which date*?

In pursuance to the said reference the statement of claim was filed on behalf of workman/applicant before this Tribunal and a I.D. Case No. 84 of 2021 was registered.

In the statement of claim, the workman pleaded that he was engaged on the post of Helper in the Central Institute of Plastic Engineering & Technology (hereinafter referred to as 'Institute') and in the said capacity he started working and discharging his duties w.e.f. 06.11.2010. Thereafter the applicant was allowed to work and discharge his duties on the post of Helper through contractor uptil 12.9.2019; and on 12.9.2019 his services were retrenched by means of oral order without following the mandatory provisions as provided under Section 25-F of Industrial Disputes Act 1947 (hereinafter referred to as 'Act 1947'). Accordingly it is prayed by the applicant that an oral order of retrenchment dated 12.9.2019 may kindly be set aside and he may be reinstated in services.

On behalf of respondent in the written statement it was submitted as under:-

i) The applicant was never appointed in the respondent Institute as Helper or on any other post. In the year 2013 the Central Institute of Petrochemicals Engineering & Technology, Lucknow Centre (CIPET) needed some persons to work in the Institute to help the already working employees and accordingly, they invited quotations from manpower providing agencies to provide manpower to work through the agency on purely contractual basis.

ii) A manpower providing agency, namely M/s. Rakshak Manpower & Safeguards (P) Limited along with other agencies submitted a quotation dated 26.12.2013 along with bio-datas of suitable candidates to work through their agency.

iii) M/s. Rakshak Manpower & Safeguards (P) Limited was accepted and a letter date 25.2.2014 was issued by CIPET approving the names of 30 candidates to work through M/s. Rakshak Manpower & Safeguards (P) Limited for one year on the terms and conditions mentioned in the letter itself. The

name of applicant was mentioned at Serial No.29 of the list and the term of agency was extended from time to time till a new agency took over.

iv) CIPET is registered under Rule 18(1) of Contract Labour (Regulation & Abolition) Central Rules 1971 and has been issued Certificate of Registration No.CLRA/RLCLUCKNOW/2021/R-5.

v) The applicant never worked in CIPET as an employee rather he worked in CIPET only as an employee of M/s. Rakshak Manpower & Safeguards (P) Limited so long as the term of agency was extended and stopped working in CIPET when the tenure of M/s. Rakshak Manpower & Safeguards (P) Limited came to an end.

vi) The contract of M/s. A.K.Agencies was only upto 31.8.2019 and a new Agency had to take over charge w.e.f. 1.9.2019. By means of letter dated 30.8.2019 M/s. A.K. Agencies was required to complete all formalities regarding completion of the contract.

Sri Anurag Srivastava Learned Counsel appearing on behalf of respondent on the strength of above said averments pleaded that the workman is not an employee of the Institute and he did not produce/file any cogent evidence before this Tribunal in order to prove that he was an employee of the Institute rather his engagement was through an agency known as M/s. Rakshak Manpower & Safeguards (P) Limited and thereafter through another contractor M/s. A.K. Agencies and after that the contract came to an end and accordingly his engagement automatically stands finished. So the plea which is taken on behalf of applicant that his services were retrenched by the respondent is totally illegal and wrong. In support of their case, he placed relevant judgment passed by the Hon'ble Supreme Court in the case of Director, Institute of Management Development, U.P. Versus Pushpa Srivastava reported in (1992) 4 SCC 33.

Accordingly, on behalf of respondent it was argued by Sri Anurg Srivastava that as per law laid down by the Hon'ble Supreme Court in the case of Director, Institute of Management Development, U.P. Versus Pushpa Srivastava after end of contract period the applicant is not entitled for any relief.

In addition to said facts Sri Anurag Srivastava also submits that Institute is registered under Rule 18(1) of Contract Labour (Regulation & Abolition) Central Rules 1971 and has been issued Certificate of Registration No.CLRA/RLCLUCKNOW/2021/R-5. On the above said strength the Learned Counsel for the respondent Sri Anurag Srivastava submits that the case filed by the applicant lacks on merits and is liable to be dismissed.

Finding & Conclusion:

I have heard the Learned Counsels for the parties and gone through the records.

Sri Anil Kumar Gautam-applicant was initially engaged as Helper/Workman as a causal employee in the Institute and in the said capacity he worked initially though a man power agency namely M/s. Rakshak Manpower & Safeguards (P) Limited and thereafter through A.K. Agencies and on 12.9.2019 his services were retrenched/terminated.

In order to establish his case, on behalf of workman by an application dated 13.12.2023 certain documents were filed which are on record from Serial no.1 to 12. The said documents were denied by the respondent in spite of the fact that a copy of which was given to the respondent.

From the perusal of said documents the position which emerges out that the applicant was engaged as Helper/Worker on 6.11.2010 and his services were retrenched on 12.9.2019. During the tenure of his engagement the applicant worked from 25.2.2014 to 12.9.2019 through contractor with whom the Institute had entered into an agreement. In this regard the workman has stated in his evidence filed on affidavit dated 10.4.2023 (examination in chief) and in his cross examination he has stated as under:-

नियुक्ति के समय मेरी सेलरी 3500/– थी जो कि बढ़कर 9446/– हो गयी जो कैश दी द्वारा दी जाती थी 2014 तक उसके बाद 2014 से 2019 तक ठेकेदार द्वारा दी गयी।"

प्र0 – आपको सेलरी नगद मिलती थी या एकाउन्ट में

उ0 – नगद मिलती थी 2014 तक उसके बाद ठेकेदार के माध्यम से मिलती थी"

On behalf of respondent an evidence on affidavit dated 28.8.2023 (examination in chief) was filed by one Sri Ratan Kumar, Joint Director & Head CIPET. In his cross examination he has stated as under:-

प्र0 – 2010 से 2014 तक आपने कितने कान्ट्रेक्टर्स द्वारा काम लिया य कि मैन पॉवर उपलब्ध कराने के लिए

उ0 – याद नहीं है

प्र0 – क्या 2010 से 2014 के बीच किसी कान्ट्रेक्टर से काम लिया गया

उ0 – याद नही ंहै।

प्र0 – 2010 से 2021 तक आपने ब्वदजतंबज स्ंइवनत ;।इवसपजपवद – त्मंहनसंजपवदद्ध ।बज के तहत तमहपेजतंजपवद कराया या नहीं

उ0 – याद नही

प्र0 – 2010 से 2014 के मध्य प्रार्थी को वेतन कौन देता था

उ0 – याद नहीं"

In the light of said facts it is clearly established that Sri Anil Kumar Gautam-applicant was engaged in the Institute as Helper (Causal employee) on 6.11.2010 and his services were retrenched on 12.9.2019 and thereafter from 25.2.2014 to 12.9.2019, applicant worked through various contractors.

So far as the argument as raised by the Learned Counsel for the respondent that Institute is registered under Rule 18(1) of Contract Labour (Regulation & Abolition) Central Rules 1971, is concerned from the Certificate of Registration No.CLRA/RLCLUCKNOW/2021/R-5, contained in Annexure-3 (to the objections filed by the respondent) the position which emerges out that under Rule 18(1) of the Contract Labour (Regulation & Abolition) Central Rules 1971 Certificate of Registration for Principal Employer having Registration No.CLRA/RLCLUCKNOW/2-21/R-5 dated 7.4.2021, as such, on 12.9.2019 when the service of the applicant was retrenched by the respondent, the Institute was not notified under Rule 18(1) of Contract Labour (Regulation & Abolition) Central Rules 1971, so even if from the period 2014 to 2019 (12.9.2014) the workman was engaged through various contractors even then Institute is the Principal Employer.

Accordingly, argument raised by Sri Anurag Srivastava, learned counsel for respondent that workman Sri Anil Kumar Gautam is not a casual worker/employee of the institute has got no forced and rejected.

In the present case so far as the arguments advanced by Sri Anurag Srivastava that the Institute did not engage the Workman as Helper since 06.11.2010 and was only engaged through contractor has got no force because on the basis of documents and evidence the workman have proved and established that he had been engaged as Helper in the Institute w.e.f. 06.11.2011; and discharged his services in the said capacity till 12.09.2019, when his service was retrenched without following procedure of section 25 F of the Act; however, no evidence or rebuttal has been filed by the respondent in order to dislodge the said plea and even by way of documentary or oral evidence when admittedly on the basis of the same can disprove the plea taken by the workman.

In the present case so far as the arguments advanced by Sri Anurag Srivastava that the Institute did not engage the Workman as Helper since 06.11.2010 and was only engaged through contractor has got no force because on the basis of documents and evidence the workman have proved and established that he had been engaged as Helper in the Institute w.e.f. 06.11.2011; and discharged his services in the said capacity till 12.09.2019, when his service was retrenched without following procedure of section 25 F of the Act; however, no evidence or rebuttal has been filed by the respondent in order to dislodge the said plea and even by way of documentary or oral evidence when admittedly on the basis of the same can disprove the plea taken by the workman.

Further, from the documents which are annexed by the parties it clearly borne out that the applicant, worked for more than 240 days continuously as Helper/Workman (causal labour) in the last 12 preceding months from the date of retrenchment and his services were terminated/retrenched without following provisions of section 25 F of the Industrial Disputes Act, 1947, so, what relief he is entitled?

Answer to said question finds place in the case of ***Hari Nandan Prasad & Another reported in 2013 (139) FLR 125 (SC)*** , wherein the appellants, who was engaged on a daily wage basis, has been terminated from service, the industrial dispute was referred to the Central Government -cum- Industrial Tribunal (CGIT). The proceedings in the CGIT culminated in the termination of appellants being held to be illegal and they were directed to be reinstated and the service being regularized, in terms of a circular issued by the FCI, wherein any temporary worker employed for more than 90 days was entitled to be regularized.

In the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal reported in (2013) 14 SCC 543***, the respondent was engaged as a Mistri on muster roll basis, whose services were terminated. The workman was neither given one month's notice nor one month's salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25- F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the Hon'ble High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised

by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

In the case of ***U.P. State Road Transport Corporation vs. Man Singh reported in 2006 (111) FLR 323(SC)***, the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Hon'ble Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Hon'ble Supreme Court held that the interest of justice would be sub-served, if the Corporation was made to pay a sum of Rs. 50,000/- to the workman.

In the case of ***Nand Kumar vs. State of Bihar and others reported in (2014) 5 SCC 300***, the Hon'ble Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1***, where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible.

In the case of ***State of Orissa vs. Mamata Mohanty reported in (2011) 3 SCC 436***, the Hon'ble Supreme Court has held that the appointment made without advertisement was in violation of Article 14 and 16 of the Constitution. Para 35 and 36 of the said judgment is reproduced below as follows:-

> "*35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).*
>
> *Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.*"

Further the Madhya Pradesh Hon'ble High Court in the case of ***Branch Manager, Central Bank of India Tilak Chowk Vidisha Versus Pradeep Kumar Sen reported in 2024 (181) FLR 809*** held as under:-

> "*22. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-*
>
> > *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent*

workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

23. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

24. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")?The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded.This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:(SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had

it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

25. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar"employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and (3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

A division Bench of Hon'ble Gujarat High Court in the case of ***Range Forest Officer Versus Virjibhai Ranchhodbhai & another*** reported in 2024 (182) FLR 179 has held as under:-

6.1. The shift in law on this count was highlighted by the Supreme Court in Bhopal Vs. Santosh Kumar Seal [(2010) 6 SCC 773] relying on its own another decision in Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], observing that the relief of payment of lump-sum compensation could be a proper relief in a given set of facts and circumstances.

"In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [2006 (1) SCC 479], Uttaranchal Forest Development Corpn. v. M.C. Joshi [2007 (9) SCC 353], State of M.P. v. Lalit Kumar Verma [2007 (1) SCC 575], M.P. Admn. v. Tribhuban [2007 (9) SCC 748], Sita Ram v. Moti Lal Nehru Farmers Training Institute [2008 (5) SCC 75], Jaipur Development Authority v. Ramsahai [2006 (11) SCC 684], GDA v. Ashok Kumar [2008 (4) SCC 261] and Mahboob Deepak v. Nagar Panchayat, Gajraula [2008 (1) SCC 575].)"

6.2. In subsequent decision in Rajasthan Development Corporation Vs.Gitam Singh [(2013) 5 SCC 136], the Supreme Court stated,

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A

distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

6.3. In Uttaranchal Forest Development Corporation Vs. M.C.Joshi [(2007) 9 SCC 353], the Supreme Court held that the question of grant of compensation in place of relief of reinstatement could be guided by relevant factors to be that whether the appointment was made in accordance with the statutory Rules or not.

6.4. It is to be observed that the decisions of the Supreme Court have carved out the circumstances and aspects which may guide the discretion of the court in awarding lump-sum compensation instead of granting relief of reinstatement even if there is a breach of Section 25F, 25G and 25H of the Industrial Disputes Act.

6.5. These factors were highlighted in Bantva Municipality Vs. Amritlal Harji Chauhan being Special Civil Application No.9135 of 2013 decided on 31.3.2014 as under :-

"(i) The fact that the workman is daily-rated workmen, not permanently employed; (ii) He is not holding a permanent post; (iii) Nature of his employment; (iv) Span of service, viz. The period during which he worked upto the date of termination of services; (v) Manner and method of appointment. Whether it was a backdoor entry; (vi) The time gap from the date of termination; (vii) Delay in raising the Reference is also considered to be a germane factor;(viii) Any special feature peculiar to the facts of the particular case.

For instance, in Bhurumal (supra), the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology."

6.6. In the case of BSNL v. Bhurumal, reported in (2014) 7 SCC 177, it was categorically observed that even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself."

In view of above said facts as well as law as laid down by the Hon'ble Apex Court in the matter of ***Gopal Krishnaj Ketkar vs. Mohamed Haji Latif and others, AIR 1968 SC 1413*** has held that, if a party in possession of best evidence, which would throw a light on the issue in controversy withheld the same, Court ought to draw an adverse inference against the party notwithstanding that onus of proof does not lie on him. The party who is in possession of best evidence cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

The Hon'ble Madhya Pradesh High Court in the case of ***Chairman, Institute of Engineers, Jabalpur Versus Kailash Sen reported in 2024(181) FLR 300***, it has been held that it is not in dispute that workman was in employment with respondent since the date of engagement and prior to retrenchment of his services he has continuously worked for 240 days in the last preceding 12 months. The said plea taken by the workman has to be categorically denied and disprove by the respondent who has sufficient documentary evidence to demonstrate that employee has not worked for more than 240 days in a calander year by producing attendance and payment register. If same is not done, it will be presumed that the respondent has failed to dislodge the claim of the workman that he has worked for more than 240 days in last preceding 12 months.

A Division Bench of Hon'ble Telangana High Court in the case of ***S. Srinivas Versus The Union of India & others reported in 2024 LLR 860***, it has been held that it is trite law that a party invoking/relying on certain plea has to make an avberment with details to sustain such a plea and has to adduce material to establish allegations made and the burden is on the party to lead and prove that it is right. (see State of Uttar Pradesh v. Kartar Singh, AIR 1964 SC 1135).

Hon'ble the Apex Court in the case of ***Pradeep v. Manganese Ore (India) Limited & ors. 2022 (3) SCC 68***3 has held that as per section 106 of Indian Evidence Act, the burden lie on a party to prove and establish the plea taken by it.

Accordingly in view of the said facts the argument, advanced by the Learned Counsel for the respondent Sri Anurag Srivastava that workman is not an employee of the Institute and he did not produce/file any cogent evidence before this Tribunal in order to prove that he was an employee of the Institute rather his engagement was through some agency and accordingly his engagement automatically stands finished with the expiry of contract entered between the Institute and Agency, so, the plea which is taken on behalf of applicant that his services were retrenched by the respondent is totally illegal has got no force because, the workman Sri Anil Kumar has clearly established and proved that he has worked for more than 240 days in the last preceding 12 months prior to date of his oral termination on 12.09.2019; hence, the same is rejected.

Thus in view of above once action on the part of respondent thereby retrenching the services of the workman without following the provisions of Section 25-F of the Act 1952 is contrary to law, then what what relief the workman is entitled in pursuance to the reference No. K-10/1-11/2021-IR Dated 11.08.2021.

Answer to the said question finds place in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal reported in (2013) 14 SCC 543***, the respondent was engaged as a Mistri on muster roll basis, whose services were terminated. The workman was neither given one month's notice nor one month's salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25- F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the Hon'ble High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

In the case of ***U.P. State Road Transport Corporation vs. Man Singh reported in 2006 (111) FLR 323(SC)***, the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Hon'ble Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Hon'ble Supreme Court held that the interest of justice would be sub-served, if the Corporation was made to pay a sum of Rs. 50,000/- to the workman.

In the case of ***Nand Kumar vs. State of Bihar and others reported in (2014) 5 SCC 300***, the Hon'ble Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1***, where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible.

In the case of ***State of Orissa vs. Mamata Mohanty reported in (2011) 3 SCC 436***, the Hon'ble Supreme Court has held that the appointment made without advertisement was in violation of Article 14 and 16 of the Constitution. Para 35 and 36 of the said judgment is reproduced below as follows:-

> *"35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).*
>
> *Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to*

any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

Further the Madhya Pradesh Hon'ble High Court in the case of ***Branch Manager, Central Bank of India Tilak Chowk Vidisha Versus Pradeep Kumar Sen reported in 2024 (181) FLR 809*** held as under:-

"*22. The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal, reported in (2014) 7 SCC 177 has held as under:-*

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

23. The Supreme Court in the case of Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others reported in (2017)11 SCC 244 has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

24. The Supreme Court in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, reported in (2014) 7 SCC 190 has held as under:-

"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")?The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper

by this Court and instead compensation has been awarded.This Court has distinguished between a daily-wager who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:(SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

25. The Supreme Court in the case of O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others reported in (1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar"employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and (3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

A division Bench of Hon'ble Gujarat High Court in the case of ***Range Forest Officer Versus Virjibhai Ranchhodbhai & another*** reported in 2024 (182) FLR 179 has held as under:-

6.1. The shift in law on this count was highlighted by the Supreme Court in Bhopal Vs. Santosh Kumar Seal [(2010) 6 SCC 773] relying on its own another decision in Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], observing that the relief of payment of lump-sum compensation could be a proper relief in a given set of facts and circumstances.

"In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [2006 (1) SCC 479], Uttaranchal Forest Development Corpn. v. M.C. Joshi [2007 (9) SCC 353], State of M.P. v. Lalit Kumar Verma [2007 (1) SCC 575], M.P. Admn. v. Tribhuban [2007 (9) SCC 748], Sita Ram v. Moti Lal Nehru Farmers Training Institute [2008 (5) SCC 75], Jaipur Development Authority v. Ramsahai [2006 (11) SCC 684], GDA v. Ashok Kumar [2008 (4) SCC 261] and Mahboob Deepak v. Nagar Panchayat, Gajraula [2008 (1) SCC 575].)"

6.2. In subsequent decision in Rajasthan Development Corporation Vs.Gitam Singh [(2013) 5 SCC 136], the Supreme Court stated,

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

6.3. In Uttaranchal Forest Development Corporation Vs. M.C.Joshi [(2007) 9 SCC 353], the Supreme Court held that the question of grant of compensation in place of relief of reinstatement could be guided by relevant factors to be that whether the appointment was made in accordance with the statutory Rules or not.

6.4. It is to be observed that the decisions of the Supreme Court have carved out the circumstances and aspects which may guide the discretion of the court in awarding lump-sum compensation instead of granting relief of reinstatement even if there is a breach of Section 25F, 25G and 25H of the Industrial Disputes Act.

6.5. These factors were highlighted in Bantva Municipality Vs. Amritlal Harji Chauhan being Special Civil Application No.9135 of 2013 decided on 31.3.2014 as under :-

"(i) The fact that the workman is daily-rated workmen, not permanently employed; (ii) He is not holding a permanent post; (iii) Nature of his employment; (iv) Span of service, viz. The period during which he worked upto the date of termination of services; (v) Manner and method of appointment. Whether it was a backdoor entry; (vi) The time gap from the date of termination; (vii) Delay in raising the Reference is also considered to be a germane factor;(viii) Any special feature peculiar to the facts of the particular case.

For instance, in Bhurumal (supra), the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology."

6.6. In the case of BSNL v. Bhurumal, reported in (2014) 7 SCC 177, it was categorically observed that even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself."

Thus it is clearly established by the parties that Sri Anil Kumar Gautam was engaged in the Institute on the post of Helper/Worker and his services were retrenched on 12.09.2019. As such as per law which are referred hereinabove the workman Sri Anil Kumar Gautam is entitled for compensation as his service was retrenched without complying the provisions of Section 25-F of Industrial Disputes Act 1947 but he is not entitled for reinstatement as prayed by him.

AWARD

For the foregoing reasons as the services of Sri Anil Kumar Gautam was engaged as casual labour on 06.11.2010 and his services were retrenched w.e.f. 12.9.2019 without following the provisions of Section 25-F of Industrial Disputes Act 1947, hence, he is entitled for compensation amounting to Rs. 3.50 lacs (Rupees three lacs & fifty thousand only) but not for retrenchment in services.

The reference No.K-10/1-11/2021-IR dated 11.08.2021 is answered accordingly.

Lucknow

30th September, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 3 दिसम्बर , 2024

का.आ. 2200.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (25/2014) प्रकाि" ात करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-242]

सलोनी, उप निदेशक

New Delhi, the 3rd December, 2024

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.25/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workman.

[No. L-12025/01/2024- IR(B-I)-242]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 25/2014

BETWEEN

Smt. Kanchanwati W/o late Umesh Kumar Sharma

Through Sri Parvej Alam, 283/63, Kha, Gadhi Kanaura (Premwati Nagar)

Post- Manak Nagar, Lucknow- 226011

Appellant

AND

1. Varishth Mandal Parichalan Prabhandhak

   Northern Railway DRM Office, Hazratganj, Lucknow

2. Varishth Mandal Karmik Adhikari,

   Northern Railway DRM Office, Hazratganj Lucknow

3. Mahaprabhandhak,

   Northern Railway, Baroda House, New Delhi

Respondents

AWARD

Facts in brief

On 28.02.2014 Claimant/Mrs Kanchan Wati filed a claim petition under section 2-A of the Act registered dispute act, 1947 relevant paragraph of 1 and 2 are as under: -

(1) *यह कि वादी के स्व0 पति उमेश कुमार शर्मा पु. श्री कामता प्रसाद दिनांक 10.02.1984 को एवजी पोर्टर के पद पर श्रीमान स्टेशन प्रबन्धक, उ0रे0 लखनऊ के अधीन नियुक्त हुए थे तथा दिनांक 09.07.1988 तक कुल 1079 दिन तक कार्य किया था। कार्य प्रमाण–पत्र सलग्नक– 1 सलग्न है। है।*

(2) *यह कि मेरे पति का देहान्त दिनांक 19.03.2013 को हो गया । मृत्यु–प्रमाण–पत्र व वादी का पहचान–पत्र तथा आयु प्रमाण–पत्र सलग्नक 2,3 व 4 सलग्न है।*

Further the relief as claimed is as under

श्रीमान जी से विन्रम निवेदन है कि वादी के पति को कनिष्ठ कर्मकारों के उपर दिनांक 10.07.1988 से सभी हितलाभों सहित री–ईस्टेट करने व वादी को करूणामूल आधार पर नौकरी व पेन्शन आादि सभी हित लाभों के भुगतान हेतु आदेश करने की कृपा करें। महान कृपा होगी।

On 21.08.2014 on behalf of respondent written statement was filed.

Thereafter pleadings/documents are exchanged between the parties.

Matter is taken up in the revised cause list.

None appeared on behalf of the claimant.

Sri G.C. Rai learned counsel for the respondent.

I have heard Sri G.C. Rai learned counsel for the respondent, gone through the record.

Finding & conclusion

The Core question is to be decided whether the present claim filed by the claimant under section 2-A (3) of the ID is barred by period of limitation as provided under section 2-A (3) of the I.D. Act.

> *That the present industrial dispute has been raised by the claimant after an inordinate delay of 4 years from the date of his alleged termination i.e. 28.08.2008 which is beyond the period prescribed for agitating the cause of action, under provisions of section 2A (3) of the Industrial Disputes Act, 1947, hence this Hon'ble Tribunal has no jurisdiction to take cognizance thereof. That the Industrial Disputes Act, 1947 and the Rules framed there under are complete code in itself which contain the mandatory provisions prescribed for empowering any cause before the expiry of three years from the date of discharge dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1) of Section 2A of the Industrial Disputes Act, 1947, it is specifically stated that this enactment has not conferred any jurisdiction or powers to condone any delay by any of the authority including this Hon'ble Tribunal, appointed and constituted under Act.*
>
> *In these circumstances the above noted claim may kindly be rejected with heavy costs.*

Accordingly he requested that the present case filed by claimant is liable to be dismissed on the ground of limitation as per section 2-A(3) of the I.D. Act.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery.

The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 10.09.2012, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 10.07.1988, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.04.2014 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section (3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner,

inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language

is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position as the services of the workman was terminated on 10.07.1988, challenged by him by filing the present industrial dispute on 28.04.2014, so the same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act 1947.

In view of the above said facts present claim statement filed by the claimant is barred by period of limitation i.e. beyond 3 years as provided under section 2-A(3) of the Act, so same is dismissed on the ground of limitation.

Award as above.

Lucknow

24.06.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 3 दिसम्बर , 2024

का.आ. 2201.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इलाहाबाद बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (84/2012) प्रकाि" ात करती है।

[सं. एल - 12011/33/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 3rd December, 2024

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.84/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workman.

[No. L-12011/33/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 84/2012

Ref. No. L-12011/33/2012 (IR(B-II)

The General Secretary **Vs.** The Chairman & Managing Director,

BETWEEN

The General Secretary Allahabad Bank Staff Association (UP)

C/o Allahabad Bank,

Hazaratganj, Lucknow- 226001

Workman

AND

1. The Chairman & Managing Director,
   General Manager, Allahabad Bank,
   Head Office, Netaji Subhash Road, Kolkata (WB)
2. The Assistant General Manager,
   Allahabad Bank, Divisional Office,
   Mahaddipur, Kasya Road, P.O. Kudaghat,
   Gorakhpur- 273008

Respondent

AWARD

By letter/order dated 23.11.2012 following matter referred to this Tribunal for adjudication.

"Whether the action of the management of Allahabad Bank in denying the benefit of pension as per pension regulation scheme 1993 to 21 employees of civil lines branch, Gorakhpur is legal and justified what relief the workmen are entitled for?.

On behalf of the claimants in their claim petition through General Secretary Allahabad Bank Staff Association U.P., it has been pleaded as under:-

1. यह कि कि इलाहाबाद बैंक के प्रवचन ने कर्मचारियों व अधिकारियों को पेशन स्वीकृत करने हेतु इलाहाबाद बैंक इम्पलाइज पेंशन रेगुलेशन 1993 स्कीम लागू की जिसके अन्तर्गत दिनांक 31-10-1993 को सेवारत कर्मचारियों को पेशन का लाभ अनुमन्य है

2. यह कि उपरोक्त स्कीम के अन्तर्गत पेंशन की पात्रता हेतु कर्मचारियों को विकल्प पत्र भरना था अतः प्रवनान द्वारा कर्मचारियों से इलाहाबाद बैंक के प्रधान कार्यालय के परिपत्र स 3904 दिनाक 06.09.1904 द्वारा अपेक्षा की गयी की बाधित प्रपत्र 30.9.1994 तक सम्वन्धित शाखा प्रबन्धक को प्राप्त करा दें।

3. यह कि उपरोक्त प्रधान कार्यालय के परिपत्र सं. दिनांक 06.09.1994 के अनुपाल में बैंक की सिविल लाइन शाखा गोरखपुर के कर्मचारियों द्वारा समयावधि में अपने पेंशन विकल्प पत्र शाखा प्रबंधक को हस्तगत करवा दिये गये थें। इन कर्मचारियों की सूची संलग्न है।

4- यह कि शाखा स्तर पर प्रबंधन की लापरवाही के कारण उक्त सभी पेंशन विकल्प पत्र समयावधि में क्षेत्रीय प्रमुख को अग्रसारित नहीं किये गये । इस लापरवाही की जानकारी सम्बन्धित कर्मचारियों को नहीं थी। उपरोक्त लापरवाहीं की जानकारी प्रथम बार शाखा के कर्मचारियों को मात्र वर्ष 1998 में हुई जब श्री च्रन्दभान चौरसिया को सेवा निवृत्त पर पेंशन विकल्प प्रपत्र प्रबन्धन को समयावधि में प्राप्त करा दिया था और प्रबन्धन की लापरवाहीं के कारण क्षेत्रीय प्रमुख अग्रसारित नहीं किया गया था।

5- यह उल्लेखनीय है कि श्री च्रन्दभान चौरसिया के प्रतिवेदन पर प्रधान कार्यालय के पंत्राक ADMIN/STD/7401 दिनांक 11.01 1999 के उत्तर में विविल लाइन गोरखपुर शाखा के मुख्य vius izca?kd us पत्र दिनाक 12.02.1999 द्वारा संदर्भित पेशन विकल्पों की वस्तु स्थित से प्रधान कार्यालय को अवगत कराया गया जिसके आधार पर प्रधान कार्यालय द्वारा
श्री चौरसिया का पेशन विकल्प शाखा स्तर पर निम्ति रहना स्वीकारते हुये उन्हें पेशन स्वीकृत की गयी।

6. यह कि सिविल लाइन शाखा गोरखपुर ने कार्मिकों के पेंशन विकल्पों को सिविल लाइन शाखा गोरखपुर द्वारा प्रधान कार्यालय को प्रेषित कर दिया गया था। प्रधान कार्यालय द्वारा पेशन विकल्पों को स्वीकार करने की पुष्टि ना होने पर मुख्य प्रबन्धक सिविल लाइन गोरखपुर में अपने पत्र दिनाक 052001 को अनुस्मारक भेजा जिस पर कोई कार्यवाही होना प्रतीत नहीं होता है।

7. यह कि सिविल लाइन शाखा गोरखपुर ने कार्मिकों द्वारा पेशन विकल्पों को समयावधि में प्राप्त कराये जाने तथा शाखा के अधिकारियों द्वारा लापरवाही बरतते हुये उन्हें सक्षम अधिकारी को समय से प्रेषित न करने की स्वीकारोक्ती की है और इसी आधार पर उपरोक्त श्री चौरसिया को पेंशन स्वीकृत करने के उपरान्त भी इसी प्रकार के अन्य कार्मिकों के पेंशन विकल्पों पर सकारात्मक निर्णय की सूचना आज दिन तक नहीं दी गयी। फलस्वरूप प्रबन्धन की लापरवाही के कारण संलग्न सूची में दशांचे गये कर्मचारियों में से सेवा निवृत्त कार्मिकों को पेंशन स्वीकृत नहीं की गयी है और उक्त सूची में बचे हुये कार्यरत कर्मचारियों को नवें वेतन समझौते के अन्तर्गत भुगतान किये गये एरियर में से नवम्बर 2007 के परिवर्तित वेतन का 28 गुना रूपया काट लिय गया और उन्हें पेंशन के द्वितीय विकल्प को भरने के लिये वाह्य किया गया जो सर्वथा अनुचित एवं अवैधानिक हैं क्योंकी यह समी कर्मचारी पहले ही समयस्त्वधि में पेशम विकल्प दिये थे उन्हें नवें द्विपक्षीय समझौते के तहत कोई भी धनराशि पेंशन फन्ड में नहीं जमा करनी पड़ी।

8. यह कि यूनियन की ओर से इस सम्बन्ध में पत्रांक 104/2010 दिनांक 21.09.2010 द्वारा प्रधान कार्यालय से मांग की गयी थी की इस प्रकरण पर पत्राचारों की दृष्टि में संलग्न सूची में अंकित सभी कर्मचारियों के 1994 में समयावधि में दिये गये पेंशन विकल्पों की श्री चौरसिया के प्रकरण की भाति स्वीकार किया जाय तथा नवें द्विपक्षीय समझीते के अन्तर्गत एरियर से पेंशन फन्ड में की गयी कटौती वापस की जाय किन्तु प्रबन्धन ने आज तक कोई कार्यवाही नहीं की अतः प्रस्तुत औधोगिक विवाद उत्पन्न हुआ।

9. यह कि प्रतिवादी बैंक का उक्त कार्य अनुचित अवैध, अन्यायपूर्ण दुर्भावनापूर्ण तथा अनुचित श्रम रीति नीति के ज्वलन्त प्रमाण है।

10. यह कि यदि बैंक प्रबन्धन द्वारा संबन्धित कर्मकारों का पेंशन आप्शन फार्म समय से पूरा करके भेज देती तो वाद में सम्बन्धित कर्मकारों को होने वाली परेशानियों से बचाया जा सकता था तथा एक मु" त राशि तथा उस अवधि का ब्याज भी न देना पड़ता।

प्रार्थना पत्र

अतः निवेदन है कि एवार्ड द्वारा निम्न उपाय दिलायें।

(क) पेशन स्कीम 1983 के अनुसार सम्बन्धित कर्मकारों द्वारा भरा गया विकल्प उसी तिथी से लागू ekuk जाय।

(ख) पेंशन स्कीम वाद में वर्ष 2011 में लागू वाटते समय एक मुश्त लिये गये रूपये एवं उस पर वापस करने की तिथी तक का ब्याकअपस दिलाया जाय ।

(ग) बाद का परिव्यय भी दिलाया जाय।

Case of respondent

The case as pleaded by respondent in their statement of defence, (relevant portion) quoted as under:

a. That a scheme was proposed and formulated for pension in the bank industry in the year 1993 on the basis of settlement reached between the Indian Banks That a Association representing member Banks and All India Bank Employees Association. Under the said scheme, retired employees who retired on 01.01.1986 and till 31.10.1993. including the existing employees/officers on the Bank's roll as on 31.10.1993 were required to exercise option for availing the after Benefit of pension within the stipulated to the Bank brought instruction Circular No. 3904 dated 06.09.1994 in the timer with option forms in which the existing employees and retired employees were required to exercise their option Initially, the time limit for exercising the option was till 30.09.1994 but subsequently the said date was extended ili 30.11.1994.

b. That the said scheme of 1993 got its final shape in the year 1995 and in exercise of the powers conferred by clause (f) of sub section (2) of section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act No. 5 of 1970), the Board of Directors of the Allahabad Bank with concurrence of the Reserve Bank of India and prior sanction of the Central Government, approved the Regulations which was notified in the official Gazette of India on 29th September, 1995 and came to be known as Allahabad Bank (Employees') Pension Regulations, 1995 (ABEPR-1995).

c. Similar steps were taken by different Nationalized Banks which came out with their respective pension Regulations in terms of the aforesaid Settlement.

d. That as per provisions of the ABEPR-1995, all retired employees and families of deceased employees, retired/expired on or after 01.1.1986 and existing employees/officers on the Bank’s roll as on 29.9.1995 were required to exercise option for availing the benefit of pension within the stipulated time, i.e. 27.1.1996. While the existing employees were required to authorize the bank to permanently transfer the employer’s share of provident fund to pension fund, the retired employee/widows of deceased ex-employees were required to refund the employer’s share of provident fund with interest received by them at the time of their retirement.

e. That incidentally as per the provisions contained therein, pension as AERO 1995 was in lieu of Bank's Contribution to Provident Fund and those moves who did not exercise the option under Contributory Provident Fund Scheme continued to be covered under contributory provident fund scheme.

f. That while a sizeable number of retired employee opted to receive pension, a good preferred for remain covered under the existing Cop scheme as well as existing employees within the cut-off date of 27.01.1996. in it is submitted that at the and did not opt for pension time of coming into force of ABEPR 95, this cone case with any new scheme, there was uncertainty among the employees ABEPR-95 compared to the benefits provident fund scheme as to the benefits etc. under which led to abstinence by some of the employees, from exercising option under ABEPR 95 within prescribed date. But subsequently, ABEPR 95 best be benefits including commutation/family pension Under ABEPR-95 proved to be more beneficial and as such the employees who did not exercise option for pension consciously within prescribed date desired to be covered under ABEPR- 95. Since the last date for submission of option on the first two occasions were already over on 30.11.1994 and 27.01.1996 respectively, some of the concerned employees as a matter of afterthought filled up option forms belatedly and started making claims to be covered under ABEPR-95 on the basis of the purported option forms, as is the case in the present claim. The Bank had no discretionary authority to accept and act upon such purported options submitted, after the aforesaid cut-off dates.

Finding & Conclusion

After hearing the learned counsel for the parties and going through record the point to be considered are as under:-

A. Whether the preliminary objection raised by the respondent that the claim as raised by the claimant is liable to be dismissed as the same has been raised at belated stage i.e. after 17 years?.

B. Whether the relief as claimed by the claimant (21 employees) for getting benefit of pension as per Pension Regulation Scheme 1993 of civil lines branch Gorakhpur can be granted or not?.

Finding on the point No. A

Answer to the preliminary objection raised by the respondent that the claim as raised by the claimant is liable to be dismissed as the same was raised at belated stage i.e. 17 years finds places in the judgment rendered by the Bombay High Court in the case of Haribhau Vs. State of Maharashtra and Ors. [2002](92) FLR1011] wherein it has been held as under:-

4. The learned counsel for appellant relied upon the judgment of Supreme court in Ajaib Singh Vs. Sirhind Co-op. Marketing cum-processing service society Ltd. and Anr. Manu/SC/0254/1999 : (1999) ILLJ1260SC which was also cited before the learned single Judge. In Ajaib Singh’s case the Apex Court in paragraph 10 and 11 of the report held thus at pp. 1264 and 1265 of LLJ.

"10. It follows, therefore, that the provisions of Art. 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the ate he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent-management on the full bench judgment of the Punjab and Haryana High Court in Ram Chander Morya Vs. State of Haryana 1999 (1) SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Art. 137 of the Limitation Act were applicable in the proceedings under the Act. The court specifically held neither any limitation has been provided nor any guidelines to determine, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour Tribunal will be five years after which the government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay". We are of the opinion that the Punjab and Haryana reference made or an application under section 37-C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought if fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the judges presiding the court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the full Bench of the Punjab and Haryana High Court had completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of applicability of the period of limitation for the purposes of invoking the jurisdiction of the Courts/Boards and Tribunal under the Act.

11. In the instant case the respondent-management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no Jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the Courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and objects and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just between equals, "the Court was not justified to make them equals while returning the findings which it allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Art. 226/227 of the Constitution."

5. The Apex Court in the aforesaid judgment has held that the Limitation Act does not apply to the proceedings under the Industrial Dispute Act and the relief cannot be denied to the workman merely on the ground of delay. The Apex Court further observed that the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypothetical defence. It has further been observed by the Apex court that no reference to the labour court can be generally questioned on the ground of delay alone.

Accordingly, preliminary objection taken by the respondent that claim petition as raised by the claimant is barred, as the same has been filed at belated stated i.e. 17 years has got no force rejected.

Finding on point no. B

In order to decide the point no. 2 taking into consideration the pleading taken by the parties, and documents filed by them as well as documents/oral evidence.

From the evidence of workman Sri Brijesh Kumar dated 17.8.2015 (examination in chief) in support of his case, relevant portion of the same, reads as under:-

8. यह कि उल्लेखनीय है कि श्री चन्द्रभान चौरसिया के प्रतिवेदन पर प्रधान कार्यालय के पत्रांक ADMIN/STD/7401 दिनांक 11.01.1999 के उत्तर मे सिविल लाइन गोरखपुर के मुख्य प्रबंधक ने अपने पत्र दिनांक 12.12.1999 द्वारा संदर्भित पेंशन

विकल्पों की वस्तुस्थिति से प्रधान कार्यालय को अवगत कराया जिसके आधार पर प्रधान कार्यालय द्वारा श्री चौरसिया का पेंशन विकल्प शाखा स्तर पर लबित रहना स्वीकरतें हुए उन्हे पेंशन स्वीकृत की गयी।

9. यह कि सिविल लाइन शाखा गोरखपुर ने कर्मिकों के पेंशन विकल्पों को सिविल लाइन शाखा गोरखपुर द्वारा प्रधान कार्यालय को प्रेषित कर दिया गया था। प्रधान कार्यालय द्वारा पेंशन विकल्पोंके स्वीकार करने की पुष्टि न होने पर मुख्य प्रबन्धक सिविल लाइन गोरखपरु ने अपने पद दिनांक 5.7.2001 को अनुस्मारक भेजा जिस पर कोई कार्यवाही होना प्रतीत नही होता है।

11. यह कि यूनियन की ओर से इस संबन्ध में पत्रांक 104/2010 दिनांक 21.09.2010 द्वारा प्रधान कार्यालय में मांग की गयी थी इस कारण पत्राचोरों की दृष्टि में सलग्न सूची में अंकित सभी कर्मचारियों के 1994 में समयवधि में दिये गये पेंशन विकल्पों की श्री चौरसियों के प्रकरण की भांति स्वीकार किया जाये तथा नयें द्विपक्षीय समझौंते के अन्तर्गत एरियर से पेंशन फण्ड में की गयी कटौती वापस की जाय किन्तु प्रबन्धन ने आज तक कोई कार्यवाहीं नहीं की अतः प्रस्तुत औद्यौगिक विवाद उत्पन्न हुआ।

Further on behalf of claimant/ Sri Deep Kumar Bajpayee who is the General Secretary of the Union known as Allahabad Bank Staff Association filed his evidence on affidavit dated 06.03.2012 in support of the case of workman in which he stated as under:-

5- यह कि चन्द्रभान चौरसिया के प्रतिवेदन पर प्रधान कार्यालय के पत्रांक ADMIN/STD/7401 दिनांक 11.01 1999 के उत्तर मे सिविल लाइन गोरखपुर के मुख्य प्रबन्धक ने अपने पत्र दिनाक 12.02.1900 द्वारा संदर्भित पेशन विकल्पों की वस्तुस्थिति से प्रधान कार्यालय को अवगत कराया जिसके आधार पर प्रधान कार्यालय द्वारा श्री चौरसिया की पेशन स्वीकृत कर दी गयी। तथा अन्नच कामना कारों का पेंशन विकल्प फार्म भी प्रधान कार्यालय को भेज दिया गया। पुष्टि न होने पर 06.07.2001 की अनुस्मारक भेजा जिस पर कोई कार्यवाही नहीं की गयी।

6. यह कि सिविल लाइन्स शाखा गोरखपुर ने समस्त कार्मिकों को पेंशन विकल्प को समयावधि में प्राप्त कराये जाने तथा शाखा के अधिकारियों द्वारा लापरवाही बरतते हुए सक्षम अधिकारी को समय से प्रेषित न करने की स्वीकारोक्ति की है। पेंशन विकल्प पर साकारात्मक निर्णय की सूचना फिर भी नहीं दी गयी।

7. यह कि बैंक द्वारा अपने कर्मचारियों को पेंशन विकल्प मरने का एक और मौका 2010 में दिया गया जिसके अनुसार परिवर्तित वेतन का 2.8 गुना रूपया जमा करके द्वितीय पेंशन विकल्प को भरने के लिए कहा गया था जो सर्वथा अनुचित एवं अवैधानिक है। क्योंकि सम्बन्धित कर्मकारों द्वारा अपना पेंशन विकल्प समय से भर दिया गया था। उन्हें 9वें द्विपक्षीय समझौते के तहत कोई भी धनराशि पेंशन फण्ड में नहीं जमा करनी थी।

Moreover in that cross examination, Sri Deep Kumar Bajpayee on 06.09.1994, on oath submitted as under:-

1. वर्ष 1998 में ज्ञात हुआ कि बैंक ने 1998 में दिये गये पेंशन वाप्टीज का संज्ञान नहीं लिया कि ये कथन मैने वाद पत्र के पैरा 5 में लिखा है यह सहीं है कि वर्ष 210 में कागज में 7/1 एवं 7/2 की द्वारा पहली बार बैंक प्रबधन की विभिन्न कर्मचारियों के पेंशन वाप्टीज के संज्ञान न लेने की सबंध में लिखा। वर्ष 2010 जब सेन्ड वाप्टीज मांगा गया तब मुझे पता चला । कि लोंगों ने पेंशन वाप्टी वाप्ट किया होता उनके पीएफ स्टेटमेंट में बैंक का कन्टेशन नहीं जोडा जाता है। बैंक की सैलरीशिप मे पीएफ प्रति माह मेंशन होता है यह सभी कर्मचारी युनियन के मेंम्बर है। कागज कि 7/8 में वर्णित सभी कर्मचारी नवम्बर 1994 में सिविल लाइन्स शाखा में कार्यरत थे। कागज से 7/20 देखकर बताया कि उक्त पेंशन वाप्शन फार्म में 30.11.1994 की तारीख दर्ज है एंव कागज से 7/19 की पेंशन वाप्शन की तारीख 30.11.1994 व्यक्त है।

2. 1994 की पेंशन स्कीम के अंतर्गत पहली कट आफ डेट 30.09.94 थी जिसे बाद में बढाकर 30.11.94 तक किया गया था। यह सहीं है कि इन श्रमिक के साथ श्री चन्द्र भान चौरसिया भी एक कर्मी थे जिनका पेशन वाप्शन बैंक द्वारा संज्ञान में नहीं गया था। पेशन वाप्शन मैंने मुख्य प्रबधंक को दिया जिनका नाम वाद पत्र में व्यक्त नहीं है।

3. सभी कर्मियों (प्रस्तुत वाद से सबंधित) ने वर्ष 2010 में दूसरी पेंशन वाप्शन में काप्शन दिया है एंव पेंशन दी जा रही है। यह सहीं है कि स्टेटमेन्ट के अनुसार पेंशन वाप्शन की कट आफ डेट जो कि 30.11.1994 थी बैक द्वारा बढाया नहीं जा सकता है। चन्द्रभान चौरसिया के केस में बैंक ने कटआफ डेट की कागजात हुये वाप्शन लिया।

4. यह सहीं है कि बैंक की कोई भी प्रार्थना पत्र के पत्राचार अपने पेंशन वाप्शन की संज्ञान में न लिये जाने की सम्बन्ध वर्ष 2010 तक नहीं किया था। यूनियर की जानकारी में होते हुए भी कर्मचारी द्वारा सेंकन्ड वाप्शन वाप्ट किया गया जबकि पेंशन की सबंध में बैंक से पत्राचार किया जा रहा था। कागज से 7/9 से 7/29 तक दाखिल पेंशन वाप्शन की छाया प्रतिया है। मूल बैंक की दे दी है।मूलप्रति बैंक प्रबंधक की कर्मचारियों ने समय सीमा के अन्दर अलग अलग तिथियों दी। पेंशन आप्शन फार की रीविन्ग दी जाती है। रीविन्ग की मूलप्रति कर्मचारी के पास रहती है। मैने रीविन्ग की मूल प्रति दाखिल नहीं की है। यह कहना गलत है कि सभी कर्मियों ने समय से पेंशन वाप्शन नहीं दया एंव वाद गलत है।

Further taking into consideration above said evidence and material on record, the position which emerged out that appropriate government proposed and formulated scheme for pension in the banking industries in the year 1983 on the basis of the settlement entered between Indian Bank Association representing all the banks and all India employees association.

As per the said scheme an agreement entered between the parties that the retired employees who retied on or after 1.1.1986 and till 31.10.1993 including existing employees/officers and bank rules on 31.10.1993 were required to exercise of pension for availing the pension benefit with stipulated time.

The said scheme was came into existing in the year 1995 when in the exercise of power conferred by clause (f) of sub-section (2) of section 19 of the Banking Companies (Acquisition And Transfer Undertakings) Act 1970 the all the Banks working in the banking sector, including Board of Directors of Allahabad Banks with the concurrence of the Reserve Bank of India and prior to sanction of the Central Government approved the regulation/notified in the official gazette of Government of India on 29th September 1995 and knows as Allahabad Bank (Employees) Pension Regulation 1995. As per the provision of the same all the retired employees and family decease employees retired employees on or after 1.1.1986 and existing employees/officers on the bank rules as on 29.9.1995 were required to excise auction for availing benefit of pension within the stipulated period i..e. 27.1.1996.

From the material on record the position emerged out that the 21 employees on behalf of which the present case has been filed by the General Secretary Allahabad Bank Staff Association U.P. namely Ramesh Kumar Mishra, Radhey Shyam kapoor, Krishna Kumar Shukla, Ram Krishna Pandey ,Sushil Kumar Sharma, Anil Kumar Singh, Paras nath, Girjesh Kumar, Brijesh Kumar Shrivastava, Jayesh Kumar Singh, Jagdish malik, Binod Kumar Das, Lalit Kumar ,Smt. Jumratan, Alham Ali, Ram Prasad, Karuna Shankar, Prabhu Nath Singh, Arjun Prasad, Ram Vilas, Ram Jiyavan not submitted their option as per the said scheme.

Thus once above said employees have not excised their option as per the said scheme, they are not entitled for availing the benefit of pension as per said Pension Regulation.

Moreover, it is not disputed rather admitted fact on the basis of pleading (pleading made by respondent) not disputed by claimants/workmen:-

13. *That in the years after the coming into force of the Pension Regulation of 1995, there was a constant demand by the workman employees' Unions and officers' Associations, across various Nationalized Banks, to introduce another option for pension for those eligible employees whose pension option for one reason or the other was not recorded on the earlier occasions but who wanted to be a member of pension of regulation-1995 in respective banks. The said demand culminated into singing of 9th Bipartite Settlement/joint note dated 27.4.2010 between the Indian Banks Association (IBA) representing Management of various Banks and workmen unions/officers Association of respective banks, vide which another option for pension was extended to the employees of the banks. The said settlement and joint note was signed between IBA and workmen Unions/Officers Association after several rounds of discussion and workmen/unions/officers' association after several rounds of discussions and after considering all the modalities regarding another opportunity for eligible employees to opt for pension in terms of Pension Regulations 1995/1996 in their respective Banks which was a long water tided to the employees of the employees who were not covered the said regulation. As per the said Settlement/Joint Note dated 27.04.2010 the desirous existing employee was of discussion and required to submit option-cum-authorization to transfer the entire contribution Cherished desire of the employees/ex of the Bank along with entire interest accrued thereon to the credit of Pension Fund and also to transfer to Pension Fund an amount equal to 2.8 times of his/her revised pay for the month of November 2007 representing his/her share in the 30% contribution towards funding Kap. Similarly the different categories of desirous ex employee, more or less fap, required to submit option-cont undertaking to refund the Bank's contribution to Provident Fund together with accrued interest thereon paid to him/her on retirement plus an amount equal to 56% of the Bank's contribution to Provident Fund with interest received at the time of retirement being 30% contribution towards funding gap.*

14. *That in the context of the case at hand, it is pertinent to mention that the said Settlement/Joint Note dated 27.04.2010 was applicable to all the Nationalized Banks and not just Allahabad Bank.*

15. *the Government of India was also accorded to implement terms of Settlement/Joint Note dated 27.04.2010 between the Indian Banks Association (IBA) and Unions/Association for the grant of option to the retirees and payment of arrear pension to such retirees with effect from 27.11.2009, who opt for pension and comply with the terms and conditions set out in the said Settlement/Joint Note. The Bank also came out with Instruction Circular No. 11143/PA/2010-11/27 dated 15.09.2010 and the last date for exercise of option in terms of the aforesaid Instruction Circular was set as 18.11.2010, based on Settlement/Joint Note dated 27.04.2010. Again, as was the case before, a large number of eligible employees/ retired employees/ widow of deceased ex- employees exercised option for pension and those who did not, continued to remain members of the contributory provident fund scheme.*

16. *That the ABEPR 1995 having been approved by the reserve bank of India and having sanction of the Central Government under section 19 (2) (f) of the Banking Companies (Acquisition and transfer of undertakings) Act, 1970,*

the bank has no discretionary authority to act upon the purported pension options of those who neither gave their option within 30.11.1994 under the scheme of 1993, nor submitted their option under 1995 regulations within stipulated time i.e. till 27.1.1996 and even further did not submit their option within 18.11.2010 in terms of settlement/Joint Note dated 27.4.2010.

17. *That it is pertinent to mention here that majority of those eng employees/retired employees who did not exercise their options on the first two occasions have subsequently opted for pension pursuant to the aforesaid Settlement/Joint Note dated 27.04.2010 within the prescribed cut-off date. As per the terms of the said settlement, reached between IBA representing member Banks and Union/Association of employees of respective Banks besides exercising option, the retired optees who had retired before 27.04.2010 had to refund Bank's Contribution to provident fund alongwith an addition amount of 56% thereupon and the existing employees as on 27.04. 2010 had to make a contribution to pension fund, an amount equivalent to 2.8 times of their pay (revised) of Nov. 2007.*

18. *That incidentally it is observed that majority of employees whose purports pension options were enclosed along with the claim letter dated 09.09.2011 in the Conciliation proceedings, subsequently have submitted their option/ undertaking/ authorization (2nd option in response to bank's circular dated 15.09.2010), as applicable, within prescribed date and also complied with the terms and conditions as per the Bipartite/ Joint Note dated 27.04.2010, where after their options have been duly recorded by the Bank. However, some have again chosen not to opt for pension within the prescribed date, pursuant to Settlement/Joint Note dated 27.04.2010, and have continued to be part of contributory provident fund as they had done on the earlier two occasions out of their own free will. In either case, Bank has acted as per option exercised or otherwise within the prescribed date. It is submitted that option/ undertaking/ authorization, as stated above, was submitted by the employee/ex-employee voluntarily as per his/her own free will and without any protest.*

Further it is not disputed by the claimant rather admitted by the workmen (some of them) on whose behalf present dispute raised in the present I.D. case that in pursuance to option excised by them as per second pension, they have given pension, relevant point is quoted herein below:-

Sr. No.	**Name of employee/office (shirt/Smt.**	**P.F. Number**	**Whether exiting or retired employees officer**	**Whether pension optee under 2nd pension options in terms of settlement/joint note dated 27.4.2010**	**Current pension being paid**
1.	Ramesh Kumar Mishra	Not mentioned			
2	Radhey Shyam kapoor	6464	Retired-officer cadre- scale-I	Yes	Rs. 23,109,08
3	Krishna Kumar Shukla	6213	Retired-award staff	Yes	Rs. 20,106,34
4	Ram Krishna Pandey	11429	Existing-officer Cadre-Scale-I	Yes	Not applicable
5	Sushil Kumar Sharma	15738	Existing –Award Staff	Yes	Not applicable
6	Anil Kumar Singh	14499	Existing-award staff	Yes	Not applicable
7	Paras nath	16837	Retired-award staff	Yes	Rs. 11,630,81
8	Girjesh Kumar	13496	Retired-award staff	Yes	Rs. 11,517.91
9	Brijesh Kumar Shrivastava	19072	Existing-officer cadre scale-III	Yes	Not applicable
10	Jayesh Kumar Singh	19545	Existing-award staff	Not applicable (is a pension optee-exercised option within cut-off date in 1994-95 at jaipur kishanole branch, rajasthan i.e. his then place of posting	Not applicable

11	Jagdish malik	24428	Existing officer cadre scale I	Yes	Not applicable
12	Binod Kumar Das	24850	Existing officer cadre scale II	Yes	Not applicable
13	Lalit Kumar 8016	Existing officer cadre III		No	Not applicable
14	Smt. Jumratan	20537	Retired-award staff	Yes	Rs. 3,930.37
15	Alham Ali	20380	Existing-award staff	Yes	Not applicable
16	Ram Prasad	Not mentioned			
17	Karuna Shankar	16835	The PF Number 16835 belongs to an ex-employee by the name of Sanjeev Goel.		
18	Prabhu Nath Singh	16990	Retired-award staff	No	Not applicable
19	Arjun Prasad	26160	Existing-award staff	No	Not applicable
20	Ram Vilas	15741	Existing award staff	No	Not applicable
21	Ram Jiyavan	6114	Retired-award staff	No	Not applicable

Thus keeping in view above said facts claimants/workmen are not entitled for any benefit as per Pension Regulation Scheme 1993, in view of the law as laid down by the Hon'ble Apex Court in case of **B.L. Sreedhar & others Vs. K.M. Munireddy (dead) & other (2003) 2 SCC 355,** relevant paragraph quoted herein below:-

13. *Estoppel is a rule of evidence and the general rule enacted Sc 115 of the Indian Evidence Act 1872 (in short "Evidence Act) which lays down that when one person has by his declaration. act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person his representative to deny the truth of that thing [See Sunderabai and Anr. v. Devaji Shankara Deshpande (AIR 1954 SC82)*

14 *"Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth" Co.Litt. 352(a), cited in Ashpital v. Byron. 3B and S. 474(489) Simon v Anglo American Telegraph Co. (1879) 5 QBD. 188 CA per Bramwell L.J. at p. 202. Halsbury, Vol. 13. Para 488. So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. Halsbury, Vol. 13, para. 448. The rule on the subject is thus laid down by Lord Deman in Pickard v. Sears 6 Ad. & &E 469 at p. 474*

"But the rule is clear, that, where one by his words of conduct willfully cares another to believe the existence of a certain state of things, and induces him to act to that belief, to as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.

"The whole doctrine of estoppel of this kind, which is fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of estoppel- estoppel by representation-which is founded upon reason and it is founded upon decision also. Per Jessel. MR in General Finance & Co. v. Liberator, LR. 10 Ch.D.15(20).

And the Hon'ble the Apex Court in the case of **Union of India Vs. Susaka Pvt. Ltd. (2018) 2 SCC 182**, the relevant paragraph 26 and 27 are quoted below:-

> 26. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Cuilibet licet renuntiare juri pro se introducto. (see Maxwell on the Interpretation of statutes 12th Edition at page 328).

27. If a plea is available-whether on facts or law, it has to be raised by the party at appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case. (see alo Rupchand Ghosh Vs. Savesran Chandra (1906) 33 cell 915 and Sri Karan Singh Vs. Sita Ram Aggrawal AIR 1994 SC page 364.

In addition to above said facts once is not disputed rather admitted fact the claimant (21 employees) excise their option in order to get the benefit as per second Pension Scheme, thereafter they are being given pension opted under second pension scheme as per Bipartite Settlement dated 27.4.2010, so they are not entitled for claim benefit as per first Pension Scheme.

Further as per principle of waiver which means that an intentional relinquishment of a non-right. It involves conscious abandonment of a existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. **(See Dawsons Bank Ltd. Vs. Nippon Menkwa Kabushihi Kaish, AIR 1935 PC 79; Basheshar Nath Vs. Commissioner of Income Tax, Delhi and Rajasthan & Anr., AIR 1959 SC 149; Mademsetty Satyanarayana Vs. G. Yelloji Rao & Ors. AIR 1965 SC 1405; Associated Hotels of India Ltd. Vs. S.B. Sardar Ranjit Singh, AIR 1968 SC 933; Jaswant Sinth Mathur Singh & Anr. Vs. Ahmedabad Municipal Corporation & Ors., (1992) Suppl 1 SCC 5; M/s Sikkim Subba Associates Vs. State of Sikkim, AIR 2001 SC 2062; and Krishna Bahadur Vs. M/s Purna Theatre & Ors., AIR 2004 SC 4282**, claimants are not entitled for any relief in the present case as per reference dated 23.11.2012

ORDER

For the foregoing reasons there was no fault/illegality on the action of the management of Allahabad Bank *"Whether the action of the management of Allahabad Bank in denying the benefit of pension as per pension regulation scheme 1993 to 21 employees of civil lines branch,* Gorakhpur according the claimants are not entitled for any relief as claimed by means of present reference dated 23.11.2012.

Reference as answered accordingly.

Award as above.

Lucknow

Date 22.8.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 3 दिसम्बर , 2024

का.आ. 2202.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर पुर्व रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (47/2004) प्रकाशित करती है।

[सं. एल - 42012/231/2003- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 3rd December, 2024

S.O. 2202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 47/2004*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Northern Eastern Railway and their workman.

[No. L-42012/231/2003- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 47/2004

Ref. No.-L-41012/231/2003 (IR (B-I) dated 08.4.2004

Siya Ram **V/s** The Divisioanl Railway Manager

BETWEEN

Sri Siya Ram S/o Sri Thakuri
R/o Rajaganj, Thana, Gota Gokarnath,
Post-Rajaganj, District Khiri, Kheir

… …… Workman

AND

The Divisional Railway Manager (personnel)
Northen Eastern Railway,
DRM Office, Ashok Marg, Lucknow

… …. Respondent

AWARD

By means of reference dated 8.4.2004 referred to this tribunal for adjudication.

क्या प्रबन्धन, पूर्वोत्तर रेलवे, लखनऊ द्वारा श्री सियाराम पुत्र श्री ठकुरी, चतुर्थ श्रेणी कर्मचारी को दिनांक 10.2.1999 से नौकरी स निकाल दिया जाना उचित तथा न्यायसंगत है? यदि नही तो कर्मकार किस अनुतोष को पाने का हकदार है?

Accordingly I.D. case no. 47/2004 registered before this tribunal.

Case of the workman:-

Workman/ Siyaram initially appointed in the Diesel Shed Purvttar Railway Gonda 1976 thereafter in 1985 promoted to the post of SBA while he was working and discharging his duties in the said capacity as per the case of workman on 5th December 1992 he fallen ill so proceed to his residence at village Rani Jila Kheri however due to serious illness not able to join his duties.

Further in the statement of claimant/ workman pleaded that his wife fallen ill on 23.7.1993 as a result of which he was not able to join his duties however in this regard continuously given application from 5.7.1992 to 23.7.1993 to authority concerned.

On 23.7.1993 he submitted his joining but not allowed to join the duties in spite of his request and authority concerned did not inform him that on what ground he was not allowed to join his duties as such submitted representation to authority concerned at Gonda, requesting therein that he may be allowed to join his duties but no heed paid.

While he was at the place of his posting he received information that his mother died so went to Kheri in this regard sent information through application (UPC) to the Railway authorities at Gonda

On 29.7.1997 Mandal Rail Vidhut Lucknow issued a charge sheet to workman in which charge was leveled that he was absent without leave from 1.1.1993 continuously.

On 6.8.1997 workman/ Siyaram submitted his reply an enquiry proceeding initiated against he appeared before the Enquiry Officer but not allowed by enquiry officer to participate in the enquiry proceedings as no adequate opportunity given to him to defend his case.

On 9.8.1998 Enquiry Officer submitted enquiry report on the basis of finding given by the Enquiry Officer in the enquiry report workman/Siya Ram was found to be continuously absent from duties with effect from 1.1.1993 to 29.6.1997.

The copy of enquiry supplied/given on 15.7.1998 to workman in response to which he submitted his representation/reply on 28.10.1998.

On 10.02.1999 appointing authority (Varishth Mandal Engineering) passed an order of removal by which he was removed from service with effect from 10.02.1999.

Aggrieved by the said order applicant filed appeal before Appellate Authority in spite of repeated representation/reminder, appeal filed by applicant was not considered.

In view of the said factual background applicant for redressal of his grievances approached appropriate government for redressal of his grievances on the basis of which by reference dated 8.4.2024, and the present I.D. case referred to this Tribunal.

Accordingly in view of the above said factual background on behalf of appellant it was submitted/pleaded in the written statement that as the enquiry has been done in utter violation of principle of natural justice no adequate opportunity provided to appellant so keeping in view of the said facts the punishment order dated 102.1999 by which he was removed from service may be set aside and he may be reinstated in service with consequential benefits.

Case of respondent

On behalf of the respondent written statement filed in which allegation as pleaded by workman in his claim petition was denied and by way of additional pleas, it was pleaded by respondent as under:-

विशेष कथन

1. यह कि प्रार्थी द्वारा अपनी डयूटी से अनाधिकृत रूप से अनुपस्थित रहना उसकी आदत में शामिल है जो कि श्रमिक के द्वारा डयूटी से अनुपस्थित रहने का विवरण देखने से पूर्णतः स्पष्ट हो जाता है। वास्तव में वादी/प्रार्थी को रेल सेवा में बने रहते हुऐ रेल सेवा कार्य क प्रति अब कोई रूचि नहीं है। वर्ष 1989 से डयूटी पर अनुपस्थित रहने का विवरण इस प्रकार है।

2-

वर्ष	अनुपस्थित	अर्जित अवकाश दिवस	बिना वेतन अवकाश दिवस	योग
1989	156	35		1914
1990	334			334
1991	116	23		175
1992	86		118	204
1993	365			365
1994	365			365
1995	365			365
1996	366			366
1997	365			365

उपरोक्त विवरण से स्पष्ट है कि श्रमिक पर वर्ष 1993 से लगातार अनधिकृत रूप से अनुपस्थित रहने के लिये की गई अनुशानिक कार्यवाही पूर्णतः औचित्ययुक्त थी। चूंकि वादी/श्रमिक ने वर्ष 1989 में 156 दिन अनुपस्थित रहने पर भी डूयटी करने का अवसर प्रदान किया गया इसके बाद वर्ष 1990 में 334 दिन अनुपस्थित रहने पर वर्ष के शेष दिवस में डयूटी करने का अवसर प्रदान किया गया इसके उपरांत 1991 में 150 दिन अनुपस्थित तथा 23 दिन का अवकाश उपभोग करके भोष दिन डयूटी करने का अवसर प्राप्त किया।

वादी/श्रमिक अपनी डयूटी से अनाधिकृत रूप से अनुपस्थित रहने का पहले से ही आदि है। वादी के विरूद्ध वर्ष 1997 में प्रारम्भ की गई दीघशक्ति की अनुसानिक कार्यवाही किया जाना न्यायोचित था।

3. यह कि प्रार्थी का अपनी डयूटी से अनाधिकृत रूप से अनुपस्थित रहने का आदी होना तथा पूर्व में प्रार्थी/श्रमिक को अपने में सुधार लाने के लिये लगातार पिछले तीन वर्षो में अवसर प्रदान करने के उपरांत श्री श्रमिक में कोई सुधार नहीं आया तथा श्रमिक दिनांक 01.01.1993 से डयूटी पर से लगातर अनुपस्थित हो गया। श्रमिक का 01 जनवरी 1993 से जुलाई 97 तक लगातार डयूटी पर उपस्थित न होना जो अवधि इनकी अनुपस्थित रहने की 4–1/2 (साढे चार वर्ष) से अधिक हो चुकी थी रेल प्रशासन को विवश होकर प्रार्थी/श्रमिक के विरूद्ध एस0एप00–5 (दीर्घ शस्ति) की अनुशासनिक कार्यवाही करने के लिये आध्य होना पड़ा श्रमिक के विरूद्ध एस.एप.0:5 का आरोप पत्र सं0 वि/कम्प0/ 29/97/1267 जारी किया गया जिसे कर्मचारी को उपलब्ध कराने के लिये श्रमिक के स्थायी निवास पते पर लखीमपुर भेजा गया उक्त आरोपपत्र प्राप्त करने के उपरांत श्रमिक स्वयं रेल प्रशासन के सम्मुख उपस्थित नहीं हुआ बल्कि रजिस्टर्ड डाक द्वारा एक प्रतिवदेन विद्युत कार्यालय को भेजा जिसमें लिखा गया कि विधवा मां का गंभीर बीमारी में रहकर स्वर्गवास हो गया तथा पत्नी बीमार रहती है। कर्मचारी के उक्त डाक द्वारा भेजे गये प्रतिवदेन पर अनुशासनिक प्राधिकारी द्वारा श्रीमिक पर लगाये गये आरोप की जांच के लिये दिनांक 22.9.97 को जांच अधिकारी नामित कर जांच कार्यवाहीं का आदेश पारित किया गया जांच अधिकारी द्वारा जांच कार्यवाही के दौरान अनुशासनिक जांच क लिये निम्न अंकित तिथिंया निर्धारित की गई जो क्रमशः 14.11.97, 10.12.97, 10.1.98, 20.1.98, 6.2.98, 20.2.98, 25.3.98, 14.4.98, तथा 01.5.98 है थी जिसमें दिनांक 10.12.97, 20.01.98, 6.2.98 तथा 20.2.98 को श्रमिक

सियाराम जांच कार्यवाहीं में उपस्थित तो हुआ परन्तु इस दौरान उसने अपनी अनुपस्थिति के कारणों के संबंध में कुछ भी स्पष्ट नहीं किया और न हीं कोई प्रमाण ही प्रस्तुत किया वर बार बार नई तिथि के लिये आग्रह कर तिथि बढवाते रहे।

4. यह कि दिनांक 10.12.97 को श्रमिक ने जांच अधिकारी से लिखित अनुरोध कर अपने बचाव हेतु दिनांक 20.01.96 की तिथि निर्धारित कराई थी इसके बाद भी श्रमिक के पुनः अनुरोध पर क्रमशः 20 फरवरी 95 निर्धारित की गई परन्तु दिनांक 20.2.98 के बाद जांच कार्यवाही में श्रमिक कभी उपस्थित नहीं हुआ इस प्रकार जांच अधिकारी ने श्रमिक को अपना बचाव करने हेतु बार बार अवसर दिया परन्तु श्रीमिक ने अवसर का समुचित फायदा नहीं उठाया गया।

5. यह कि श्रीमिक/ सियाराम द्वारा जांच कार्यवाही में आगे उपस्थित न होने के कारण जांच अधिकारी द्वारा श्रमिक का सर्विस रिकार्ड व उपस्थित पंजिका की जांच करने के उपरांत अपनी रिपोर्ट प्रस्तुत कर दी गई। वादी/श्रमिक को दिनांक 01 जनवरी 1993 से रिपोर्ट प्रस्तुत किये जाने की तिथि 2 मई 1998 तक श्रीमिक को लगातार अनुपस्थित पाया गया और अनाधिकृत अनुपस्थित रहने के लिये इन पर लगाये गये आरोप सिद्ध पाये गये।

मंडल रेल प्रबंधक (विद्युत) के पत्र सं0 वि0/कम्प/29.7.37 दिनांक 15.7.98 के द्वारा रजिस्टर्ड डाक से श्रमिक के स्थायी निवास लखीमपुर सूचना भेजी गई तथा जांच रिपोर्ट पर इनका प्रतिवदेन सहमति प्रस्तुत करने के लिये निर्देशित किया गया जिसके उत्तर में श्रमिक ने स्वंय उपस्थित न होकर रजिस्टर्ड डाक द्वारा एक प्रतिवेदन दिनांक 28.10.98 को प्रस्तुत किया था।

6. यह कि श्रमिक द्वारा जांच कार्यवाहीं की रिपोर्ट प्राप्त करने उपरांत रजिस्टर्ड डाक द्वारा प्रस्तुत किये गये प्रतिवदेन दिनांक 28.10.98 जांच अधिकारी द्वारा प्रस्तुत जांच रिपोर्ट जांच कार्यवाही एवं उपलब्ध प्रपत्रों को गहनता से अध्ययन करने के उपरांत अनुशासनिक प्राधिकारी प्रवर मंडल विद्युत इंजीनियर/पूर्वोत्तर रेलवे लखनऊ वादी पर लगाये गये आरोप अनाधिकृत अनुपस्थित पूर्णः सिंद्व पाये जाने पर अनुशासनिक प्राधिकारी द्वारा दण्ड आदेश सं0 वि/कम्प/29/97/323 दिनांक 01/02/99 के द्वारा श्रमिक/सियाराम को रेल सेवा से रिमूव (निष्कासित) किये जाने का दण्ड आदेश पारित किया गया।

7. यह कि श्रमिक/द्वारा रेल सेवा से निष्कासित किये जाने के उपरांत श्रमिक की तरफ से कोई अपील दण्डादेश के विरूद्ध प्राप्त नहीं हुअ वरन श्री उपेन्द्र शर्मा एडवोकेट द्वारा अपील दिनांक 24 मार्च 99 को रजिस्टर्ड डाक द्वारा इस कार्यालय को प्राप्त हुई थी। विभागीय अनुशासनिक कार्यवाहीं क अंतर्गत अपील करने का अधिकार केवल कर्मचारी को होता है परन्तु इस मामले में श्रमिक ने स्वयं अपील न करके वकील के हस्ताक्षर से वकील द्वारा अपील प्रस्तुत की गई थी जो कि डी0ए0आर0नियमों कें अंतर्गत विचार करने योग्य नहीं थी।

अतः मंडल रेल प्रबन्धक (विद्युत) लखनऊ अपने पत्र सं0 वि0कम्प/29/97/1648 दिनांक 26/7/99 द्वारा श्रमिक को सूचित किया गया कि दण्डादेश के विरूद्ध अपील नियमानुसार आरोपित कर्मचारी द्वारा किया जाना चाहिए परन्तु आपने स्वयं अपील नहीं की है। चूंकि अपील नियमानुसार नहीं की गई है अतः इस पर विभागीय कार्यवाहीं किया जाना सम्भव नहीं है।

8. यह कि श्रमिक ने रेल सेवा में बने रहते हुए दिनांक 01/01/93 से रेल सेवा मं निष्कासन की तिथि 10.2.99 तक अनाधिकृत अनुपस्थित अवधि छह वर्षो से अधिक हो चुकी थी। इसके साथ हीं वर्श 1989 से वर्ष 1992 तक की अवधि में श्रमिक 902 दिन अनाधिकृत रूप से पहले अनुपस्थित रहां। ऐसी स्थित में आरोपित कर्मचारी सिया जो इस मामले में प्रार्थी है को रेल सेवा से रिमूव निष्कासित किये जाने का दण्ड स्वरूप लिया गया निर्णय पूर्ण रूप में नियमानुसार उचित है।

9. यह कि श्रीमिक द्वारा प्रस्तुत दावा गलत तथ्यों पर आधारित व वास्तविकता को छुपाकर प्रस्तुत किया गया है।

10. यह कि बिना किसी कानूनी आधार क तथा बिना वाद कारण उत्पन्न हुए श्रमिक द्वारा प्रस्तुत दावा विधि विरूद्ध अतः श्रमिक का दावा/केस सव्य निरस्त खारिज किये जाने योग्य है ।

Finding and conclusion

In spite of notice none appeared on behalf of workman/claimant I have heard Sri Rahul Nigam Advocate on behalf of respondent and perused the record.

In the present case workman/ Siyaram initially appointed in the Diesel Shed Purvttar Railway Gonda 1976 and was promoted to the post of SBA while he was working in discharging his duties of SBA at Gonda on 5th December 1992 he fallen ill so workman lived his residence in village Rani Jila Kheri while he was there on 23.7.1993 his wife fallen ill so he was not able to join his duties after recovering from the illness on 23.7.1993 came to join his duties but not allowed to join.

On 29.7.1993 a charge sheet issued to workman and one Sri S.K. Rai was appointed as Enquiry Officer before whom the workman appeared and submitted his reply on 6.8.1997 after conducting the enquiry proceeding, on 20.01.1998

enquiry report submits by the Enquiry Officer supplied to workman on 15.7.1998, to which he submitted his reply on 28.10.1998.

By an order dated 10.2.1999 passed under Rule 6, VII, VIII, IV of the Railway Servant (D-A/A) Rules, 1968 by Pravar Mandal Vidhut Engineering Lucknow by which workman/claimant was removed from service.

From the perusal of material on record the position which emerged out that after issuing of the charge sheet dated 29.7.1997 workman/Siya Ram submitted his reply to the charge sheet and from the documents filed by the parties it is clear that sufficient and adequate opportunity provided to the workman during the course of enquiry proceedings and the Enquiry Officer after conducting the enquiry proceedings on the basis of the material available before him submitted in his enquiry report dated 9.8.1998 that the workman/Siya Ram was continuously absent from duties on 1.1.1993 to 29.6.1997.

Accordingly submission/pleadings as made by appellant in his claim statement that enquiry was not done in accordance with law/ principal of natural justice has got no force, rejected.

Further workman/Siya Ram in order to establish his case filed his evidence on affidavit dated 9.6.2006 (A-30) on record and thereafter he was cross examined relevant portion of the cross examination of workman/Siya Ram quoted herein below:-

1. मै 1992 में छुटटी लेकर अपने घर अपने गृह जनपद रंजागंज लखीमपुर खीरी गया वहां मै अचानक बीमार पड़ गया। इसकी सूचना मेडिकल सर्टिफिकेट लगाकर यूपीसी डाक से विद्युत फोर मैन डीजल शेड गोण्डा को भेजा था। जिससे 22.7.1993 तक मै छुटटी पर नहीं आ सका। बीच में भी मैने डाक द्वारा अवकाश बढाने हेतु सूचना विभाग को दी थी। दिनांक 23.7.1993 को मै विद्युत फोर मैन गोण्डा के पास डयूटी जाइन करने पहुचां मुझे डयूटी में नहीं लिया गया मुझे सिनियर डिविजनल इलेक्ट्रनिक इन्जीनियरिंग लखनऊ के पास प्रार्थना पत्र लेकर भेजा।

2. मुझे चार्ज भीट दिनांक 29.7.97 को डाक द्वारा मिली इस आरोप पत्र में मुझ पर 16.12.92 से 22.7.93 तक अनुपस्थित रहने का आरोप लगाया गया था। इस आरोप पत्र का मैने 6.892 को जवाब दिया। मैन प्रकरण में श्री एस के राय को जांच अधिकारी बनाया गया था। जांच कार्यवाही में उपस्थित हुआ दिनांक 20.1.98 एंव 6.2.98 को नियत तिथि पर मुझे बुलाया गया और मै उपस्थित हुआ। इन तिथियों पर उपस्थित होकर मै डिफेन्स काउन्सिल नामित करने का प्रार्थना पत्र दिया। मुझसे प्रार्थना पत्र ले लिया गया और मुझे कमरे के बाहर बैठा दिया गया।

3. जांच अधिकारी द्वारा दी गयाी जांच आख्या की सूचना मुझे 15.7.98 को डाक द्वारा प्राप्त हुई। जिसका मैने 28.10.98 के पत्र से जवाब दिया। जांच रिपोर्ट के साथ अभिलेखीय साक्ष्य एवं गवाहों के बयान आदि की प्रति नहीं भेजी गयी थी। दिनांक 10.2.99 के आदेश द्वारा मुझे सेवा से बर्खास्त कर दिया गया। जांच कार्यवाई से पूर्व न तो मुझे निलम्बित किया गया और न हीं कोई भत्ता दिया गया क्योंकि मै डयूटी पर हीं नहीं लिया गया थ। बरखास्तगी आदेश को विरूद्ध वर्ष 1999 में मैने आपत्ति दाखिल की थी। जिसे निरस्त कर दिया था।

   In his cross examination workman stated as under:-

   यह पूछा गया कि 1990 में आपने डयूटी नहीं की तो इसका कोई जवाब गवाह ने नहीं दिया। जांच में मै कुल 3 बार जांच अधिकारी के समक्ष उपस्थित हुआ। जांच अधिकारी के समक्ष अपनी अनुपस्थिति का कारण कुछ भी नहीं बताया था। जांच अधिकारी के सामने मेंडिकल भी नहीं लगाया था जांच अधिकारी के सामने मैने तारीख बढाने की अर्जी दी थी तीनों बार अर्जी दी थी जांच अधिकारी के कोर्ट जांच रिपोर्ट मुझे नहीं मिली थी। चार्ज सीट मिली थी।

   On behalf of the respondent Sri S.K. Rai was appointed as Senior Section Engineering Purvottar Railway Lcuknow, on the said evidence was filed by respondent in order to prove their case and in his cross examination stated as under:-

   तारीख की सूचना देने के लिये मैने अपने डी ए की श्रीमिक जहां काम करता था वहां भेजा और जो डाक भेजता उस डी ए को भेजा उनकी पावती की सूचना मेरे पास है जो पत्रावली में दाखिल है।

   मैनेजमेंट की गवाही के लिए इन्चार्ज को बुलाया था श्रमिक जहां करता था वह स्वयं नहीं आया उसने अपने प्रतिनिधि को भेजा था। जिनका नाम सुधीर कुमार है। वह उपस्थिति पंजिका लेकर आये थे जिससे मुझे श्रमिक की उपस्थिति देखनी थी। इसको मैने देखा और चैक करने के बाद अपना हस्ताक्षर किया सुधीर कुमार ने हस्ताक्षरित किये मैनजमेंट मे उपस्थिति पंजिका डाक्यूमेंट मैनेजमेंट की रूप में मेरे समक्ष पेश किया।

   पेज नं 44/83 से 44/84 देखकर गवाह ने बताया कि यह उपस्थिति पंजिका को देखकर बनाया गया था इसको मैने उपस्थिति पंजिका को सत्यापित किया था। वह उपस्थिति पंजिका यहां दाखिल नहीं है।

   Taking into consideration the above said facts as well as the law on the point relating to unauthorized absence quoted as under:-

Law relating to unauthorized absence:

Termination from service cannot be automatic. Absence cannot be taken as bringing in an effect of termination automatically, even under the Service Rules. In ***Jai Shankar Versus State of Rajasthan, AIR 1966 SC 492***, the

Hon'ble Supreme Court held that there can be no automatic termination for unauthorized absence, even if there be such a provision in the relevant Service Rules. The Court said that a removal is a removal and if it is punishment for over-staying one's leave, an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it.

Long unauthorized absence of a confirmed employee does not lead to a presumption that the employee is no longer willing to service. His continued absence cannot be treated as resignation nor abandonment of service as there are positive activities and more than absence would require to constitute them. In ***Sukhoo Vs. Union of India, (1997) 35 ATC 283(All)***, it was held that there could be no automatic termination on account of absence from duty.

The Hon'ble Apex Court obtained support from its earlier decision in ***Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association, (2000) 5 SCC 65*** where the absenting employee was rightly held to have voluntarily retired and that the Bank could not be faulted for passing the order without any formal enquiry. The Hon'ble Supreme Court observed:

> *"In the present case action was taken by the Bank under Clause 16 of the Bipartite Settlement. It is not disputed that Dayanand absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayanand had no intention to joining duties. Dayanand did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayanand had voluntarily retired from the service of Bank."*

On these facts the Hon'ble Supreme Court said that there was need for holding any enquiry before the order was passed. "*An enquiry would have been necessary if Dayanand had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was no allowed to join by the Bank.*"

In the cases of ***Chander Bhan Vs. Union of India (1991) 2 ATJ 596 and Gurdip Singh Vs. Union of India (1991) 2 ATJ 627*** it has been held that in the case of ex parte proceedings at least the appellate order should contain the material showing reasons for the order of punishment. A removal order was made on ex parte proceedings and appellate authority rejected the appeal without narrating the facts or stating the grounds for rejection, the Tribunal quashed the order and directed reinstatement.

In the case of ***D.K. Yadav v. M/s J.M.A. Industries 1993 AIR SCW 1995*** Hon'ble Apex Court has held as under:

> *"14. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. (13) of the certified Standing Order to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice.*

Hon'ble the Supreme Court in the case of ***Union of India & others vs. Dinanath Shantaram Karekar & othersAIR 11998 SC 2722***, relevant para as under:

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge- sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent. Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

In the case of ***Lakshmi Precision Screws Ltd v. Ram Bahagat AIR 2002 SC 2914***, Hon'ble the Supreme Court has held as under:

> *"14. While it is true that a later Three Judge Bench decision of this Court in Punjab and Sind Bank and Ors. v. Sakattar Singh (2001 (1) SCC 214) sounded a different note but the same should not detain us any further, since the factual context differs in material particulars and even the bi-partite settlement involved therein was of much accommodative in nature.*
>
> *15.It is thus in this context one ought to read the doctrine of natural justice being an in-built requirement on the Standing Orders. Significantly, the facts depict that the respondent-workman*

remained absent from duty from 13th October 1990 and it is within a period of four days that a letter was sent to the workman informing him that since he was absenting himself from duty without authorised leave he was advised to report back within 48 hours and also to tender his explanation for his absence, otherwise his disinterestedness would thus be presumed. Is this in strict compliance with the Certified Standing Order - the answer possibly cannot be in the affirmative. Though however, if the letter dated 25th October, 1990 as noticed above is to be taken note of, then and in that event the same thus come within the ambit of the Certified Standing Order of 10 days' continued absence the situation however, is slightly different in the present context since the letter of 25th October is an intimation of his name being struck off the rolls of the company. It is an act; subsequent to the order of termination and if the letter of 17th October is an indication for such an order of termination the same does not come within the ambit of the Certified Standing Order. The High Court on this score stated as below:

> *"Even if it presumed that the petitioner- management may have afforded an opportunity to the respondent-workman to tender his explanation and as such complied with the principles of natural justice in terms of the decision rendered by the Apex Court in Hindustan Paper Corporation_tm)s case (supra), yet the question remains, whether the determination of the petitioner management was arbitrary and without application of mind?"*
>
> *……..*
>
> *In our considered view, the rejection of the claim of the respondent-workman is absolutely arbitrary and without consideration of the material placed on record by the respondent-workman (as discussed in the foregoing paragraph). The Labour Court examined in detail the factual position and returned a finding that the respondent-workman had not absented himself from service deliberately or intentionally and also that he had not abandoned. his service. It was further concluded that his absence was based on account of his illness which could be affirmed from the medical certificates produced by him. In the aforesaid view of the matter, in our considered view, the action of the petitioner-management in rejecting the representation of the respondent-workman dated 30.1.1991 was clearly arbitrary and as such it is not sustainable in law".*

Hon'ble the Supreme Court in case of ***M/s Scooters India Ltd vs. M. Mohammad Yaqub & another AIR 2002 SC 227*** has held as under:

> *"12. The question which then arises is whether the principles of natural justice were followed in this case. As has been set out hereinabove Mr. Swarup had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. t is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its Award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer he was still not allowed to enter the premises. The evidence is that in spite of slip Ext. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ext. W.2 had been signed by the Security Inspector of the Appellant. This showed that the Respondent had reported for work. As against this evidence the Appellant has not led any evidence to show that the workman had not reported for duty. Even though the slip Ex. W-2 had been proved by the workman, the Security Inspector, one Mr. Shukla, was not examined by the Appellant. Further the evidence of the Senior Time Keeper of the Appellant established that the workman had worked for more than 240 days within a period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspection report, which was marked as Ext. 45/A. It was on the basis of this material and this evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Order 9.3.12 could not have been used for terminating his services."*

In Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association, (2005) 5 SCC 65; it has been held as under:-

> *"In the present case action was taken by the Bank under clause 16 of the Bipartite Settlement. It is not disputed that Dayanand absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayanand had no intention to joining duties. Dayanand did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayanand had voluntarily retired from the service of the Bank.*

Taking into consideration above said facts of the case, law on the point in issue and the pleading as made by respondent in paragraph 2 of the written statement (the detail chart as mentioned above, not deposited by workman) admitted position emerged out that the workman was absent from duties on 1.1.1993 to 29.6.1997 so taking into consideration the said facts as well as the law as laid down by Hon'ble Apex Court in the case of Jeewan Lal Vs. workman AIR 1961 Supreme Court 1567 wherein it has been held that continuous absence for a long period can be grounds passing punishment order against an employee.

Accordingly, in view of the above said facts, position of law and as per the provision of Rule 6, VII, VIII, IV of the Railway Servant (D-A/A) Rules, 1968, order of removal dated 10.2.1999 is perfectly valid.

AWARD

For the foregoing reasons order dated 10.2.1999 by which the workman/Siya Ram was removed from service is perfectly valid.

Accordingly reference dated 8.4.2004 is answered that workman is not entitled for any relief.

Lucknow

Date 10.9.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 4 दिसम्बर , 2024

का.आ. 2203.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **आई सी आई सी आई बैंक लिं** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (18/2018) प्रकाि" ात करती है।

[सं. एल - 12012/20/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th December, 2024

S.O. 2203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.18/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. their workmen.

[No. L-12012/20/2018- IR(B-I)]

SALONI, Dy. Director

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं. 18/2018

Reference No. L-12012/20/2018-IR (B-I) **Dated: 26.09.2018**

अम्रता पंचोली पुत्री श्री गोविन्द प्रसाद पंचोली, निवासी– 1.G/21, ओल्ड हाउसिंग बोर्ड, शास्त्री नगर, जिला–भीलवाडा, (राजस्थान)।

.....प्रार्थी

बनाम

1. मुख्य कार्यकारी और देश प्रबंधक, BNP परिबास, बान्द्रा कुर्ला कम्पलेक्स, 1 नार्थ ऐवेन्यु, मार्कर मैक्सटी, बान्द्रा (ईस्ट) मुम्बई –400051

2. क्षेत्रीय प्रबंधक, ICICI बैंक लि., सुभाष नगर, भीलवाडा, (राजस्थान)

3. शाखा प्रबंधक, ICICI बैंक लि., गॉव– बादलीयास, भीलवाडा, (राजस्थान)

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

प्रार्थी की तरफ से : कोई उपस्थित नहीं।

अप्रार्थी की तरफ से : कोई उपस्थित नहीं।

: **अधिनिर्णय** :

दिनांक :04.09.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 26.09.2018 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्याय निर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"Whether Amrita Pancholi, Sr. Officer ICICI Bank Ltd. is a workman as per definition pf Section 2 (s) of the Industrial dispute Act, 1947, if yes, then whether the action of Management of ICICI bank Ltd. In terminating service of Amrita Pancholi w.e.f. 15.03.2018 is just and legal? If not, then to what relief the concerned workman is entitled to and from which date?"

2. श्रम मंत्रालय द्वारा यह विवाद दिनांक 26.09.2018 को पंजीकृत डाक द्वारा इस अधिकरण के साथ साथ विवाद के पक्षकारों यथा प्रार्थी संगठन व विपक्षीगण को भी प्रेषित किया गया था। यह विवाद दिनांक 28.09.2018 को इस अधिकरण में प्राप्त हुआ–तथा पक्षकारों की उपसंजाति व अभिवचनों की प्रतीक्षा में अब तक लंबित रहा है। आज दिनांक 04.09.2024 तक भी इस संदर्भित विवाद के अग्रसरण हेतु प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत नहीं किया है। श्रम मंत्रालय द्वारा संदर्भित विवाद के संबंध में विवाद प्रस्तुत करने वाले पक्षकार (प्रार्थी) को यह निर्देश दिया गया है कि वह उक्त आदेश की प्राप्ति के 15 दिन की अवधि में अपने दावे का अभिकथन इस अधिकरण के समक्ष प्रस्तुत करे। चूकिं प्रार्थी को यह आदेश पंजीकृत डाक के माध्यम से प्रेषित किया गया है, यह उपधारित किया जाना नितांत न्यायोचित है कि–जिस प्रकार इस अधिकरण को संदर्भित आदेश 28.09.2018 को प्राप्त हो चुका है–प्रार्थी को भी यह आदेश प्राप्त हो चुका होगा।

3. इस तथ्यात्मक परिदृश्य में इस अधिकरण का यह सुविचारित अधिमत है कि प्रार्थी व विपक्षीगण के मध्य संदर्भित विवाद के अग्रसरण हेतु प्रार्थी–पक्ष अनिच्छुक व उदासीन है। इसलिए दावे के अभिकथन के अभाव में प्रार्थी संदर्भित विवाद में कोई अनुतोष पाने का अधिकारी नहीं है।

4. संदर्भित विवाद का निस्तारण इसी प्रकार किया जाता है।

5. अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावें।

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.